

EXHIBIT A

**VIDEO DEPOSITION
BYRON LOCKWOOD**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.
18-cv-402

THE CITY OF BUFFALO,
c/o Corporation Counsel,
BYRON LOCKWOOD, individually and in
his capacity as Police Commissioner
of the Buffalo Police Department,
DANIEL DERENDA, individually and in his
capacity as Police Commissioner of the
Buffalo Police Department,
LAUREN McDERMOTT, individually and
in her capacity as a Buffalo Police Officer,
JENNY VELEZ, individually and in her
capacity as a Buffalo Police Officer,
KARL SCHULZ, individually and in his
capacity as a Buffalo Police Officer,
KYLE MORIARTY, individually and in his
capacity as a Buffalo Police Officer,
DAVID T. SANTANA, individually and in his
capacity as a Buffalo Police Officer,
JOHN DOE(S), individually and in his/their
capacity as a Buffalo Police Officer(s),

Defendants.

Video deposition of **BYRON LOCKWOOD**, taken pursuant to the Federal Rules of Civil Procedure, in the offices of JACK W. HUNT & ASSOCIATES, INC., 1120 Liberty Building, Buffalo, New York, on October 14, 2020, commencing at 10:01 a.m., before ANDREA J. HOBBS, Notary Public.

APPEARANCES: RUPP BAASE
PFALZGRAF & CUNNINGHAM, LLC,
By R. ANTHONY RUPP, III, ESQ.,
rupp@ruppbaase.com, and
CHAD DAVENPORT, ESQ.,
davenport@ruppbaase.com,
1600 Liberty Building,
Buffalo, New York 14202,
(716) 854-3400,
Appearing for the Plaintiff.

TIMOTHY A. BALL, ESQ.,
Corporation Counsel,
By MAEVE E. HUGGINS, ESQ.,
Assistant Corporation Counsel,
1137 City Hall,
Buffalo, New York 14202,
(716) 851-4334,
mhuggins@city-buffalo.com,
Appearing for the Defendants.

PRESENT: TYLER Z. RAHNER, Videographer

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THE VIDEOGRAPHER: So this will begin the video recorded testimony of Byron Lockwood taken for a case to be tried in the United States District Court Western District of New York to be

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10:01:31 1 used in the matter of James C. Kistner versus City
10:01:37 2 of Buffalo et al.

10:01:38 3 This testimony is being taken in the office
10:01:40 4 of Jack W. Hunt & Associates, 420 Main Street,
10:01:46 5 Buffalo, New York on October 14th, 2020, and is
10:01:49 6 commencing at the time of 10:01 as indicated on the
10:01:53 7 video screen.

10:01:55 8 The court reporter and notary public who is
10:01:59 9 from the firm of Jack W. Hunt & Associates is
10:02:03 10 Andrea Hobbs. My name is Tyler Rahner. I am the
10:02:05 11 video technician and I am from the same firm.

10:02:07 12 Counsel for the plaintiff will now introduce
10:02:10 13 themself followed by counsel for the defendants and
10:02:12 14 the reporter will then swear in the witness.

10:02:15 15 **MR. RUPP:** R. Anthony Rupp, III, Rupp Baase
10:02:19 16 Pfalzgraf & Cunningham on behalf of the plaintiff,
10:02:21 17 James C. Kistner.

10:02:21 18 **MS. HUGGINS:** Maeve Huggins on behalf of the
10:02:23 19 City of Buffalo and defendants.

10:02:26 20 **THE REPORTER:** Will you be supplying the
10:02:28 21 transcript?

10:02:28 22 **MR. RUPP:** Yes.

23

10:02:47 1 **B Y R O N L O C K W O O D**, 68 Court Street,
10:02:55 2 Buffalo, New York 14202, after being duly called
10:02:58 3 and sworn, testified as follows:

10:02:58 4

5 **EXAMINATION BY MR. RUPP:**

6

10:03:03 7 **Q.** Mr. Lockwood, good morning.

10:03:04 8 **A.** Good morning.

10:03:05 9 **Q.** As you know, my name is Tony Rupp and I
10:03:07 10 represent the plaintiff, James Kistner, in an
10:03:10 11 action commenced against the City of Buffalo.

10:03:13 12 I'm going to be asking you some questions
10:03:15 13 this morning. You've just been placed under oath.
10:03:18 14 Sir, before we begin, have you ever testified in a
10:03:20 15 deposition before?

10:03:21 16 **A.** Yes.

10:03:21 17 **Q.** All right. Approximately how many
10:03:23 18 times have you testified in a deposition setting?

10:03:27 19 **A.** Maybe about three.

10:03:28 20 **Q.** All right. And have you also testified
10:03:30 21 in court before?

10:03:31 22 **A.** Yes.

10:03:31 23 **Q.** Approximately how many times there?

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10:03:33 1 **A.** I don't know the number, but many
10:03:35 2 times.

10:03:35 3 **Q.** All right. So you're familiar with the
10:03:37 4 process?

10:03:37 5 **A.** Yes.

10:03:38 6 **Q.** All right. So for purposes of
10:03:40 7 depositions, I'm going to be asking you a series of
10:03:42 8 questions this morning and perhaps into the early
10:03:45 9 afternoon.

10:03:45 10 I'm going to try to pause and give you a
10:03:49 11 good opportunity to answer the question. I'm going
10:03:53 12 to need a verbal response from you that's audible
10:03:56 13 to our court reporter here today. Is that okay?

10:03:58 14 **A.** Yes.

10:03:59 15 **Q.** All right. If you respond with a head
10:04:02 16 nod or an uh-huh, I may motion for you to -- to
10:04:04 17 give a verbal response. It happens with just about
10:04:07 18 everybody. Okay?

10:04:08 19 **A.** Okay.

10:04:08 20 **Q.** If you don't understand a question that
10:04:11 21 I ask, will you kindly ask me to restate it or
10:04:15 22 rephrase it or have Andrea read it back?

10:04:18 23 **A.** Yes.

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10:04:19 1 Q. Okay. All right. Mr. Lockwood, can
10:04:24 2 you please provide me with your date of birth?

10:04:26 3 A. [REDACTED], 1959.

10:04:29 4 Q. Okay. And -- and where were you born,
10:04:30 5 sir?

10:04:31 6 A. Florida. Fort Lauderdale, Florida.

10:04:35 7 Q. Okay. There came a time when you
10:04:36 8 relocated to the Western New York area?

10:04:38 9 A. Yes.

10:04:38 10 Q. When was that?

10:04:39 11 A. I'd say maybe in 1962.

10:04:44 12 Q. Okay. So you've been a Western New
10:04:46 13 Yorker for all but the first three years of your
10:04:49 14 life or so?

10:04:49 15 A. Yes.

10:04:50 16 Q. All right. And did you attend schools
10:04:51 17 here?

10:04:52 18 A. Yes.

10:04:52 19 Q. Where did you graduate high school?

10:04:53 20 A. East High School.

10:04:54 21 Q. And what year was that?

10:04:56 22 A. 1977.

10:04:57 23 Q. Any education after high school?

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10:04:59 1 **A.** Yes, I have -- have an associate's
10:05:04 2 degree with ECC.

10:05:05 3 **Q.** Okay. And when did you earn your
10:05:07 4 associate's degree at ECC?

10:05:09 5 **A.** Early '90s.

10:05:12 6 **Q.** What is your degree in?

10:05:14 7 **A.** Oh, God. Liberal arts.

10:05:19 8 **Q.** Okay. Any formal education after that
10:05:23 9 point?

10:05:24 10 **A.** No. I have taken some classes at Buff
10:05:27 11 State for criminal justice.

10:05:28 12 **Q.** All right. And is that after you
10:05:31 13 achieved the degree at ECC or before?

10:05:33 14 **A.** After.

10:05:34 15 **Q.** Okay. And approximately how many
10:05:36 16 courses have you taken at Buff State?

10:05:38 17 **A.** I would say that I have -- I would say
10:05:48 18 probably about a year and a half away from a
10:05:50 19 degree. So --

10:05:52 20 **Q.** So are you actively working towards a
10:05:54 21 four-year degree at this point?

10:05:56 22 **A.** At this present time I'm not in school,
10:05:58 23 but I -- that's what I was working towards.

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10:06:01 1 Q. Okay. So you completed the associate's
10:06:03 2 degree which was a two-year degree, right?

10:06:04 3 A. Right.

10:06:04 4 Q. Did that take you two years or longer?

10:06:06 5 A. It took me longer.

10:06:08 6 Q. Okay. But you got that and you started
10:06:11 7 taking some classes at Buff State?

10:06:12 8 A. Yes.

10:06:12 9 Q. And as you sit here today, you're not
10:06:15 10 taking any, but you think you're about a year and a
10:06:17 11 half of full-time work away from a four-year
10:06:21 12 degree?

10:06:21 13 A. Yes.

10:06:21 14 Q. Okay. Do you have plans to -- to
10:06:23 15 complete that degree?

10:06:23 16 A. Yes, I do have plans to complete it.

10:06:28 17 Q. When's the last time you took a course
10:06:30 18 at Buff State?

10:06:31 19 A. It was in, I want to say maybe 2014,
10:06:44 20 something like that.

10:06:45 21 Q. Okay. And are you planning -- do you
10:06:48 22 have any current plans to enroll say, for example,
10:06:50 23 in the spring semester at Buff State, spring of

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10:06:53 1 2021?

10:06:54 2 A. No.

10:06:55 3 Q. Okay. Now, you're presently the police

10:06:58 4 commissioner for the City of Buffalo Police

10:07:00 5 Department; is that correct?

10:07:01 6 A. Yes.

10:07:01 7 Q. All right. And how long have you held

10:07:02 8 that position?

10:07:03 9 A. Since January of 2018.

10:07:12 10 Q. All right. And before that, did you

10:07:13 11 hold any positions with the City of Buffalo Police

10:07:17 12 Department?

10:07:17 13 A. Yes, I was the first deputy police

10:07:22 14 commissioner.

10:07:23 15 Q. How long did you hold that position?

10:07:24 16 A. I held that position from 2006 to 2018.

10:07:38 17 Q. And up through 2 -- when you became the

10:07:38 18 commissioner in 2018, whom did you replace?

10:07:41 19 A. Commissioner Dan Derenda.

10:07:45 20 Q. And as the first deputy police

10:07:50 21 commissioner during his tenure as commissioner, did

10:07:53 22 you report directly to him?

10:07:54 23 A. Yes.

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10:07:55 1 Q. All right. Prior to becoming the first
10:07:58 2 deputy police commissioner in 2006, were you
10:08:01 3 employed by the City of Buffalo Police Department?

10:08:03 4 A. Yes.

10:08:03 5 Q. What was your position prior to 2006?

10:08:06 6 A. Deputy -- no, I'm sorry. Detective
10:08:12 7 sergeant.

10:08:13 8 Q. Were you assigned to a particular
10:08:16 9 district at the time?

10:08:17 10 A. Yes, C district.

10:08:19 11 Q. And was there a commanding lieutenant
10:08:24 12 for C district while you were the detective
10:08:27 13 sergeant?

10:08:28 14 A. Did I have a commanding?

10:08:33 15 Q. Yes. For the -- was it broken into
10:08:34 16 shifts?

10:08:34 17 A. No, I was -- I was over the detective
10:08:37 18 division in C district.

10:08:39 19 Q. I see. And who was your supervisor in
10:08:42 20 the detective division?

10:08:43 21 A. My supervisor was -- the captain at C
10:08:48 22 district was Joe Strano.

10:08:52 23 Q. Is he still with the force?

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10:08:54 1 A. No, he retired.

10:08:55 2 Q. And how long did you serve as a
10:08:57 3 detective sergeant?

10:08:58 4 A. From 1996 to 2006.

10:09:09 5 Q. All right. And prior to -- what types
10:09:09 6 of things did you do as a detective sergeant?

10:09:10 7 A. Review cases, make sure that the cases
10:09:14 8 were signed to different officers. Also
10:09:17 9 investigated different cases too.

10:09:19 10 Q. What did you do as first deputy police
10:09:24 11 commissioner?

10:09:24 12 A. First deputy police commissioner I did
10:09:29 13 administrative work. I did -- as far as -- I deal
10:09:33 14 with all the unions. We have three unions there
10:09:36 15 and -- 264, 650, and PBA.

10:09:41 16 I also was involved in negotiation of
10:09:45 17 contract. Also the budget, I was working with the
10:09:57 18 budget -- police budget.

10:10:03 19 Q. Do you have contact with the mayor of
10:10:05 20 the City of Buffalo as first deputy police
10:10:09 21 commissioner?

10:10:09 22 A. Yes.

10:10:09 23 Q. How frequently?

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10:10:12 1 A. Maybe once a week we would meet.
10:10:19 2 Myself, the commissioner, and the other deputy
10:10:24 3 commissioner.

10:10:24 4 Q. How many deputy commissioners were
10:10:25 5 there?

10:10:25 6 A. Two.

10:10:25 7 Q. Who was the other?

10:10:26 8 A. Kim Beaty.

10:10:31 9 Q. Is that Kim a male or female?

10:10:33 10 A. Female. Kimberly Beaty.

10:10:35 11 Q. How do you spell the last name?

10:10:38 12 A. B-E-A-T-L-Y, I believe it is. And
10:10:46 13 there was also before her it was Tomaszewski,
10:10:53 14 Charles Tomaszewski.

10:10:53 15 Q. Can you spell that last name as well?

10:10:55 16 A. Standard spelling.

10:10:57 17 Q. It's a difficult spelling?

10:10:59 18 A. Yeah.

10:10:59 19 Q. Okay. We'll hold off on that for now.
10:11:02 20 Is Ms. Beaty -- how do you pronounce that?

10:11:04 21 A. Beaty.

10:11:05 22 Q. Beaty. Is Ms. Beaty still with the
10:11:07 23 police department?

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10:11:08 1 A. No.

10:11:08 2 Q. All right. And how about Tomas?

10:11:10 3 A. No, he's not either.

10:11:13 4 Q. Okay. All right. Prior to 1996 when I

10:11:19 5 understand you became a detective sergeant, were

10:11:21 6 you employed by the Buffalo Police Department?

10:11:23 7 A. Yes.

10:11:24 8 Q. And what was your position there?

10:11:25 9 A. Detective.

10:11:26 10 Q. How long were you a detective?

10:11:31 11 A. I was a detective from 1992 until 2006.

10:11:36 12 Q. And what did you do as a detective?

10:11:39 13 A. I worked in vice squad for some years.

10:11:46 14 I worked in narcotics.

10:11:50 15 Q. Were you assigned a particular

10:11:52 16 district?

10:11:53 17 A. No, those were out of headquarters.

10:11:55 18 Q. Okay. So the detective and the

10:11:57 19 detective sergeant role were out of headquarters?

10:12:00 20 A. The detective sergeant was in the

10:12:04 21 district.

10:12:04 22 Q. Okay.

10:12:05 23 A. Detective sergeant -- I mean, I'm

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10:12:09 1 sorry. The detective position was in headquarters
10:12:11 2 in squads.

10:12:12 3 Q. When you were at C district as a
10:12:16 4 detective sergeant, did you report to the
10:12:20 5 leadership in C district or did you report to
10:12:21 6 somebody in headquarters and were merely assigned
10:12:24 7 to C district?

10:12:24 8 A. I would -- I reported to the leadership
10:12:28 9 in C district.

10:12:29 10 Q. I see. All right. So from 1992 you
10:12:33 11 served as a detective, were you employed by the
10:12:36 12 Buffalo Police Department prior to 1992?

10:12:38 13 A. Yes.

10:12:39 14 Q. And what was your position immediately
10:12:41 15 prior to detective?

10:12:42 16 A. Patrol officer.

10:12:44 17 Q. How long did you serve as a patrol
10:12:48 18 officer?

10:12:48 19 A. From 1984 to 2000 -- I'm sorry, to
10:12:57 20 1992.

10:12:57 21 Q. And were you assigned to a district at
10:13:00 22 that time?

10:13:00 23 A. Back then it was precincts.

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10:13:03 1 Q. Precincts. Okay. I knew we were going
10:13:05 2 to get there eventually. Which precinct did you
10:13:09 3 work for?

10:13:09 4 A. Precinct four.

10:13:10 5 Q. And is that -- does that have a rough
10:13:13 6 analog now to the districts? What -- what -- did
10:13:17 7 precinct four become a particular district or
10:13:19 8 was -- did they change the boundaries?

10:13:21 9 A. Precinct four became part of B
10:13:27 10 district.

10:13:27 11 Q. Do you know why they changed from
10:13:30 12 precincts to districts?

10:13:32 13 A. No, I couldn't --

10:13:33 14 Q. And were there more -- were there the
10:13:36 15 same number of precincts and districts or different
10:13:38 16 numbers?

10:13:39 17 A. There were 14 precincts and there's
10:13:42 18 only five districts.

10:13:43 19 Q. Okay. And that's -- that change took
10:13:46 20 place somewhere between 1984 and 1992 when you were
10:13:51 21 a patrol officer?

10:13:52 22 A. No, I -- when they went to the
10:13:56 23 districts -- when I became a detective they were

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10:13:59 1 still precincts --

2 Q. They were?

10:14:00 3 A. -- back then too.

10:14:01 4 Q. Okay. And as a patrol officer, what
10:14:06 5 did you do between 1984 and 1992?

10:14:09 6 A. Answer -- mostly answer calls, went to,
10:14:14 7 you know, calls of shootings, domestics. Whatever
10:14:20 8 call that came up, barking dogs, and just answer
10:14:23 9 calls.

10:14:23 10 Q. And did you drive a police vehicle at
10:14:26 11 that time?

10:14:26 12 A. Yes.

10:14:27 13 Q. And back in that day, as I recall,
10:14:32 14 those were two officer cars; is that right?

10:14:32 15 A. Yes.

10:14:32 16 Q. Did you have a partner assigned to you?

10:14:35 17 A. Yes.

10:14:35 18 Q. And who was your partner during the
10:14:37 19 time -- did you have one partner or more when you
10:14:39 20 were a patrol officer?

10:14:40 21 A. I had -- I had a steady partner in
10:14:44 22 precinct four. He was Officer Harvey Smith.

10:14:47 23 Q. And is Harvey Smith still with the

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10:14:49 1 force?

10:14:49 2 A. No.

10:14:50 3 Q. Is he still alive?

10:14:52 4 A. Yes.

10:14:52 5 Q. Okay. Does he still live in the area?

10:14:55 6 A. He's -- I believe he's still here in

10:14:58 7 Buffalo. I know he -- at one time he was living in

10:15:01 8 Atlanta.

10:15:01 9 Q. And was he your -- your primary partner

10:15:05 10 for the entire eight or nine-year period that you

10:15:07 11 were a patrol officer?

10:15:08 12 A. I rode with him majority of the time.

10:15:12 13 Q. Okay. Did you work a particular shift

10:15:14 14 or did that move around?

10:15:15 15 A. I worked what we called the third

10:15:18 16 platoon and at the particular time it was -- we

10:15:22 17 were in the -- what they would call the old

10:15:25 18 doubling back.

10:15:26 19 So you would start your shift at 11 o'clock

10:15:29 20 at midnight -- I mean 11 o'clock at night and you

10:15:33 21 would get off at 7:30 in the morning and you would

10:15:35 22 report back to work at 3:30.

10:15:38 23 And then you would work until 11 o'clock and

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10:15:42 1 then you would have 24 hours off and then you would
10:15:44 2 start it all over again, 11 o'clock and get off
10:15:47 3 3:30.

10:15:48 4 So that's what -- and -- and it was -- it
10:15:50 5 was platoons. It was first platoon, second
10:15:52 6 platoon, and third platoon.

10:15:55 7 First platoon worked straight days. You
10:15:58 8 know, they worked -- they worked from 7:00 to 3:00
10:16:02 9 and then the second -- when we were off on the
10:16:05 10 24 hours, the second platoon would be working the
10:16:07 11 double back and then when they off, the third
10:16:09 12 platoon would be working the doubling back.

10:16:12 13 Q. So second and third platoon alternated
10:16:15 14 with each other?

10:16:15 15 A. Yes.

10:16:16 16 Q. Okay. And did you work third platoon
10:16:18 17 pretty much that entire eight or nine-year period?

10:16:20 18 A. Yes, that's the platoon I worked.

10:16:21 19 Q. Okay. Now, when did you first join the
10:16:26 20 Buffalo Police Department?

10:16:26 21 A. In 1984.

10:16:27 22 Q. Okay. And did you go through some type
10:16:29 23 of training before you became a full patrol

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10:16:32 1 officer?

10:16:33 2 A. Yeah, I went to the academy.

10:16:35 3 Q. All right. And where was the -- the
10:16:37 4 police academy back in 1990 -- 1984?

10:16:42 5 A. South campus.

10:16:43 6 Q. South campus --

10:16:44 7 A. Excuse me.

10:16:45 8 Q. -- of UB or ECC?

10:16:46 9 A. ECC.

10:16:47 10 Q. Okay. Now, is that -- south campus at
10:16:49 11 that time, was that located in Orchard Park?

10:16:51 12 A. Yes.

10:16:51 13 Q. Okay. How long was your police academy
10:16:54 14 training, Mr. Lockwood?

10:16:55 15 A. About 16 weeks.

10:16:58 16 Q. Okay. And when you graduated from that
10:17:00 17 program -- I assume you graduated?

10:17:01 18 A. Yes.

10:17:02 19 Q. Did you immediately become a patrol
10:17:04 20 officer or was there sort of a probationary period
10:17:07 21 of time while you were still being trained as -- to
10:17:11 22 be a patrol officer?

10:17:12 23 A. You was on six -- six months probation

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10:17:16 1 and -- yeah, six months probation.

10:17:20 2 Q. And was the gentleman you mentioned
10:17:22 3 earlier, Harvey Smith, was he your mentor or
10:17:26 4 supervisor during your probationary period or was
10:17:29 5 it someone else?

10:17:29 6 A. He -- I rode with him.

10:17:31 7 Q. Rode with him? Okay. And then you
10:17:32 8 continued afterwards once you passed your six
10:17:34 9 months of probation?

10:17:35 10 A. Right.

10:17:36 11 Q. Okay. And you went through the regular
10:17:40 12 curriculum at the police academy?

10:17:43 13 A. Yes.

10:17:43 14 Q. Okay. And since 1984 and -- and your
10:17:48 15 police academy training, have you received any
10:17:51 16 additional training either through the Buffalo
10:17:54 17 Police Department or externally beyond the
10:17:58 18 education that you've already told me about?

10:18:00 19 A. Yes. I had training when I was with
10:18:05 20 the DEA which is the Drug Enforcement Agency and we
10:18:12 21 had -- you know, every year we would do our
10:18:16 22 remedial for shooting at the range.

10:18:21 23 Q. You had to -- did you have to

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10:18:22 1 recertify?

10:18:23 2 A. Yes, every --

10:18:24 3 Q. And that was at the shooting range?

10:18:26 4 A. Yes.

10:18:26 5 Q. How about driving, did you have to
10:18:28 6 recertify as a -- as a driver of police vehicles?

10:18:30 7 A. No. Only if you -- if you were -- back
10:18:34 8 then sometime they would send you to EVOC training
10:18:37 9 if you were in a car accident.

10:18:40 10 Q. Were you ever in any car accidents?

10:18:42 11 A. Yes.

10:18:42 12 Q. Okay. Did you go to that training?

10:18:45 13 A. No.

10:18:45 14 Q. Okay. Why not?

10:18:47 15 A. They didn't send me.

10:18:48 16 Q. Okay. When you -- now I want to follow
10:18:52 17 up back on something -- follow up on something you
10:18:53 18 said just a minute ago when you were with the DEA.

10:18:55 19 A. I went with them. I would train. I
10:18:58 20 went to the schools there. I went to the school
10:19:00 21 there.

10:19:00 22 Q. I see. Okay. So that was -- federal
10:19:01 23 officers would train you?

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10:19:02 1 **A.** Yeah. When you -- when you first go
10:19:04 2 into narcotics, they would send you to drug
10:19:10 3 enforcement school so you could recognize different
10:19:12 4 types of drugs and so that was for two weeks, a two
10:19:19 5 weeks period.

10:19:20 6 **Q.** All right. Was that out of town?

10:19:21 7 **A.** No, that was -- actually, that was at
10:19:24 8 ECC.

10:19:24 9 **Q.** Okay.

10:19:24 10 **A.** South campus.

10:19:25 11 **Q.** All right. All right. So I want to
10:19:31 12 ask you some questions now, Mr. Lockwood, about
10:19:32 13 your -- your role as the police commissioner.

10:19:36 14 Let me ask you this. I -- certainly you
10:19:37 15 served as first deputy commissioner, you worked
10:19:42 16 very closely with a series of commissioners
10:19:43 17 including Dan Derenda during that period. Is that
10:19:46 18 a fair statement?

10:19:47 19 **A.** Yes.

10:19:47 20 **Q.** Okay. So you got to see what the
10:19:50 21 police commissioner did fairly up close and
10:19:52 22 personal; is that right?

10:19:53 23 **A.** Yes.

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10:19:53 1 Q. All right. Beyond that though, did you
10:19:57 2 receive any formal training before you became the
10:19:59 3 police commissioner for the entire City of Buffalo
10:20:02 4 Police Department?

10:20:02 5 A. Can you -- training?

10:20:05 6 Q. Yeah. Did you -- did you take any
10:20:06 7 additional courses or was there any additional
10:20:09 8 internal PBD training that you needed to take
10:20:13 9 before you assumed the role of commissioner?

10:20:15 10 A. No.

10:20:15 11 Q. How was it that you became the
10:20:17 12 commissioner? How were you selected, what was the
10:20:19 13 process?

10:20:19 14 A. I was selected by the mayor.

10:20:22 15 Q. And that's -- who is the mayor?

10:20:25 16 A. Mayor Byron Brown.

10:20:27 17 Q. Okay. And -- and had you known him
10:20:31 18 outside of your police work outside of your being
10:20:35 19 employed by the Buffalo Police Department?

10:20:38 20 A. Yes.

10:20:38 21 Q. Okay. How did you know him outside of
10:20:40 22 the police work?

10:20:41 23 A. You -- I only knew him as a council

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10:20:46 1 person.

10:20:46 2 Q. Okay. You knew him before he was the
10:20:48 3 mayor?

10:20:48 4 A. Right.

10:20:49 5 Q. Okay. And would you consider yourself
10:20:53 6 friends with Mayor Brown?

10:20:54 7 A. Yes.

10:20:55 8 Q. All right. Do you socialize with
10:20:56 9 Mayor Brown outside of professional associations?

10:21:00 10 A. Yes.

10:21:01 11 Q. Okay. How often do you -- do you
10:21:03 12 socialize with -- with Mayor Brown?

10:21:05 13 A. If I see him -- if we at the same
10:21:10 14 function or -- you know, it's not every day, but
10:21:17 15 whenever we have to -- if we at the same function
10:21:20 16 we would talk and, you know, just -- just talk.

10:21:23 17 Q. Okay. Have you ever been out say, for
10:21:26 18 example, to dinner with Mayor Brown and his wife,
10:21:28 19 Michelle?

10:21:28 20 A. Not with his wife, but me and him had
10:21:31 21 met for lunch.

10:21:33 22 Q. Okay. All right. I want to ask you,
10:21:38 23 you replaced Daniel Derenda you told us earlier; is

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10:21:42 1 that right?

10:21:42 2 **A.** Yes.

10:21:42 3 **Q.** Why did he leave as commissioner? He
10:21:44 4 wasn't there very long, is that a fair statement?

10:21:46 5 **MS. HUGGINS:** Form. You can answer.

10:21:47 6 **BY MR. RUPP:**

10:21:47 7 **Q.** How long was Dan Derenda the police
10:21:49 8 commissioner?

10:21:49 9 **A.** I think about eight years.

10:21:52 10 **Q.** Eight years? Okay. Why did he leave?

11 **MS. HUGGINS:** Form.

10:21:58 12 **THE WITNESS:** I have no idea.

10:21:59 13 **BY MR. RUPP:**

10:21:59 14 **Q.** Okay. Did you have any conversations
10:22:01 15 with him?

10:22:01 16 **A.** No.

10:22:01 17 **Q.** Was he fired?

10:22:03 18 **A.** No.

10:22:04 19 **Q.** Okay. As you sit here today, you have
10:22:07 20 no idea why Dan Derenda is no longer the police
10:22:12 21 commissioner and you are?

10:22:12 22 **A.** I have no -- I -- I don't know why he
10:22:16 23 left.

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10:22:16 1 Q. Did he retire?

10:22:18 2 A. Yes, he retired.

10:22:20 3 Q. Okay. Is he working in -- is he doing
10:22:22 4 any police work at all now for the City of Buffalo
10:22:26 5 or otherwise?

10:22:26 6 A. He's not working for the city.

10:22:28 7 Q. Do you know if he's working for any
10:22:29 8 other police agencies?

10:22:30 9 A. He's working for a security company.

10:22:33 10 Q. Okay. Did you meet with Mayor Brown
10:22:40 11 when he asked you to become police commissioner?

10:22:42 12 A. Yes.

10:22:43 13 Q. And did you give him an immediate
10:22:46 14 answer when he made the offer to you?

10:22:48 15 A. Yes.

10:22:52 16 Q. And I assume your answer was in the
10:22:55 17 affirmative?

10:22:56 18 A. Yes.

10:22:56 19 Q. Okay. And your first day on the job as
10:22:59 20 police commissioner was what day?

10:23:01 21 A. I want to say it was January 21st.

10:23:08 22 Q. Of what year?

10:23:09 23 A. 2018.

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10:23:10 1 Q. Was there any type of swearing in
10:23:17 2 ceremony?
10:23:17 3 A. Not that day.
10:23:19 4 Q. Eventually?
10:23:20 5 A. Eventually, yes.
10:23:21 6 Q. Okay. And where did that take place?
10:23:23 7 A. That took place in March over in the
10:23:26 8 city hall in the council chambers.
10:23:28 9 Q. And who was there?
10:23:29 10 A. The council -- council members, my
10:23:34 11 daughter, my sister, and my cousins.
10:23:39 12 Q. And the mayor?
10:23:41 13 A. I don't -- I don't think the mayor was
10:23:44 14 there.
10:23:45 15 Q. Any other officials from the Buffalo
10:23:48 16 Police Department?
10:23:48 17 A. Deputy Beaty was there and I -- I
10:23:56 18 believe it was. I can't remember exactly who all
10:23:58 19 was there.
10:23:59 20 Q. Now, when -- did you meet with
10:24:04 21 Dan Derenda as part of a transition process for you
10:24:08 22 to become the police commissioner?
10:24:09 23 A. I -- we -- when he -- when he was

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10:24:17 1 retiring, we did sit down and -- and talk, you
10:24:22 2 know, about some of the things that was going on in
10:24:26 3 the department at that time.

10:24:27 4 Q. Okay. Did he -- did he provide you
10:24:28 5 with any written transfer letters or memoranda or
10:24:33 6 anything in a written form?

10:24:35 7 A. No.

10:24:35 8 Q. All right. So it was all verbal?

10:24:36 9 A. Yes.

10:24:37 10 Q. And did he -- did you talk to him about
10:24:41 11 pending disciplinary matters that were pending with
10:24:44 12 IAD?

10:24:45 13 A. No.

10:24:45 14 Q. All right. What types of things did
10:24:47 15 you talk about that were, as you say, going on in
10:24:50 16 the department?

10:24:50 17 A. We talked about, you know, budget. You
10:24:54 18 know, it was at that particular time we had to work
10:24:57 19 on getting the overtime down.

10:25:02 20 Q. Overtime for officers?

10:25:03 21 A. Yes.

10:25:04 22 Q. Was that becoming a budget issue?

10:25:06 23 A. Well, it was -- it was becoming an

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10:25:09 1 issue.

10:25:10 2 Q. What else did you talk about with
10:25:14 3 Dan Derenda as he was transitioning out and you
10:25:17 4 were transitioning in?

10:25:18 5 A. As far as department, that was -- that
10:25:22 6 I can remember, that was basically it and, you
10:25:24 7 know, I just wished him luck on whatever he was
10:25:29 8 doing then.

10:25:30 9 Q. Now, as the police commissioner,
10:25:37 10 correct me if I'm wrong, you hold the highest
10:25:38 11 position within the Buffalo Police Department; is
10:25:40 12 that right?

10:25:40 13 A. Yes.

10:25:41 14 Q. Okay. Nobody -- you don't report to
10:25:43 15 anybody else within the Buffalo Police Department
10:25:45 16 itself; is that right?

10:25:46 17 A. Yes.

10:25:46 18 Q. All right. And I think you told me
10:25:48 19 earlier your direct report is Mayor Brown, correct?

10:25:51 20 A. Yes.

10:25:51 21 Q. And you also answer to the common
10:25:54 22 council?

10:25:54 23 A. I answer to the mayor, but I -- I work

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10:25:58 1 with the common council.

10:26:02 2 Q. And what types of things do you and the
10:26:10 3 mayor talk about when it comes to the Buffalo
10:26:13 4 Police Department over the last two years, almost
10:26:15 5 three now?

10:26:16 6 A. We talk about crime, we talk about the
10:26:20 7 budget, we talk about initiative that we can -- the
10:26:28 8 police department can do working in the -- in the
10:26:30 9 community.

10:26:35 10 Q. Do you talk at all with the mayor about
10:26:38 11 officer misconduct?

10:26:39 12 A. Sometimes that comes up.

10:26:41 13 Q. In what context would that come up with
10:26:44 14 Mayor Brown?

10:26:44 15 A. Well, if he get a report that an
10:26:47 16 officer may have done something, he would bring it
10:26:52 17 to my attention.

10:26:52 18 Q. Now, as the police commissioner, are --
10:26:56 19 are you -- do you have a role in connection with
10:27:00 20 officer misconduct and discipline within the
10:27:03 21 Buffalo Police Department?

10:27:03 22 A. Yes.

10:27:04 23 Q. What is your role?

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10:27:05 1 **A.** My role is to -- if it's a situation
10:27:10 2 where they need to be disciplined, then I give the
10:27:14 3 discipline.

10:27:15 4 **Q.** Is that every officer down to the
10:27:18 5 newest patrol officer or is that -- is there a
10:27:23 6 chain of command for imposing discipline on
10:27:27 7 officers who engage in breaches of policy or other
10:27:30 8 misconduct?

10:27:31 9 **A.** No, that's -- it would come from me.

10:27:33 10 **Q.** All right. So you're responsible for
10:27:36 11 disciplining all of the officers in the Buffalo
10:27:38 12 Police Department if they need discipline?

13 **A.** Yes.

10:27:41 14 **Q.** And can you give me a breakdown of how
10:27:44 15 many -- how many different -- first of all, how
10:27:46 16 many people are employed by the Buffalo Police
10:27:50 17 Department as you sit here today?

10:27:52 18 **A.** Officers -- sworn officers there's
10:27:56 19 about -- I would say we're about 750.

10:28:01 20 **Q.** All right. And beyond sworn officers,
10:28:03 21 there's other positions within the police
10:28:07 22 department that are paid through the police budget,
10:28:10 23 but are not necessarily actual sworn officers; is

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10:28:13 1 that right?

10:28:13 2 A. Yes.

10:28:13 3 Q. All right. And approximately how many
10:28:14 4 of those do you supervise?

10:28:16 5 A. I would say it's probably maybe about
10:28:24 6 200.

10:28:24 7 Q. Okay. So the total -- excuse me. The
10:28:28 8 total force all in, officers and support
10:28:32 9 individuals, is about 950 then?

10:28:36 10 A. Somewhere around there.

10:28:37 11 Q. Okay. And when you're talking about
10:28:40 12 sworn officers, are you referring to yourself,
10:28:44 13 commissioners, deputy commissioners, captains,
10:28:48 14 lieutenants, sergeants, those types?

10:28:50 15 A. Yes.

10:28:51 16 Q. All right. So that 750 figure includes
10:28:53 17 all of the top brass of the police department; is
10:28:56 18 that correct?

10:28:56 19 A. Yes.

10:28:57 20 Q. All right. And when it comes to
10:28:59 21 disciplining officers for misconduct or failures to
10:29:04 22 follow procedures, all of that would eventually
10:29:11 23 make it to your desk; is that right?

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10:29:11 1 A. Yes.

10:29:11 2 Q. Okay. Is there a -- you don't handle,
10:29:13 3 I assume, correct me if I'm wrong, the actual
10:29:18 4 investigations themselves; is that right?

10:29:19 5 A. No.

6 Q. All right.

10:29:20 7 A. I don't handle those.

10:29:21 8 Q. Okay. Who within the police
10:29:24 9 department, the Buffalo Police, handles
10:29:26 10 investigations into allegations of police
10:29:30 11 misconduct?

10:29:31 12 A. Internal affairs.

10:29:32 13 Q. All right. And does -- is the Internal
10:29:38 14 Affairs Division one of your responsibilities as
10:29:40 15 police commissioner?

10:29:41 16 A. Yes.

10:29:41 17 Q. And does the head -- and I don't know
10:29:45 18 what the position is yet, but does the head of IAD
10:29:50 19 report to you?

10:29:51 20 A. Yes.

10:29:51 21 Q. And what is the chain of command in
10:29:53 22 IAD?

10:29:54 23 A. The chain of command is inspector and

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10:29:57 1 then you have lieutenants that investigate.

10:30:00 2 Q. All right. And approximately --

10:30:02 3 A. Oh, I'm sorry. You have a captain.

10:30:04 4 Inspector, captain, and then the lieutenants.

10:30:06 5 Q. I see. And have the -- has the
10:30:11 6 leadership of IAD remained roughly the same since
10:30:15 7 you took the position of police commissioner back
10:30:18 8 in January of 2018?

10:30:19 9 A. Yes.

10:30:19 10 Q. Who is the inspector in charge of IAD?

10:30:23 11 A. Robert Rosenswie.

10:30:26 12 Q. And who is the captain?

10:30:30 13 A. Patrick Humiston.

10:30:35 14 Q. How many lieutenants are there?

10:30:38 15 A. Six.

10:30:43 16 Q. Are there any positions below the
10:30:48 17 lieutenants within IAD?

10:30:50 18 A. Yes, you have patrol officers.

10:30:54 19 Q. Assigned specifically to IAD?

10:30:55 20 A. Yes.

10:30:56 21 Q. And do they work in districts or do
10:30:59 22 they work out of headquarters?

10:31:00 23 A. They work out of headquarters in -- in

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10:31:03 1 the internal affairs office and then we have a
10:31:06 2 patrol officer that works over in city hall.

10:31:08 3 Q. And what is the responsibility and role
10:31:13 4 of the patrol officer that's assigned to city hall?

10:31:16 5 A. They take reports.

10:31:21 6 Q. Do -- do some complaints at least of
10:31:24 7 police misconduct come in directly to city hall?

10:31:28 8 A. Yes.

10:31:28 9 Q. And -- and that person would be the --
10:31:30 10 essentially the intake officer for those
10:31:32 11 complaints?

10:31:33 12 A. Yes.

10:31:33 13 Q. How else are complaints of police
10:31:36 14 misconduct made to the BPD and IAD?

10:31:40 15 A. They can be done in the districts. You
10:31:43 16 can go to the district and ask for a supervisor and
10:31:48 17 you can give your complaint to them.

10:31:52 18 Q. Is that a person to person or over the
10:31:55 19 phone or --

10:31:56 20 A. You can -- you can do it person to
10:31:57 21 person, you can do it over the phone.

10:32:04 22 Q. How else do complaints of police
10:32:06 23 misconduct come into the Buffalo Police Department?

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10:32:09 1 **A.** You can just come into headquarters and
10:32:11 2 go into internal affairs office and do the
10:32:14 3 complaint.

10:32:14 4 **Q.** Any other ways?

10:32:16 5 **A.** Besides telephone, going to internal
10:32:20 6 affairs, the district, and city hall, those are --

10:32:23 7 **Q.** Can complaints be made in writing?

10:32:27 8 **A.** Yes. Yeah, you -- you can send a
10:32:29 9 letter. Yeah.

10:32:29 10 **Q.** And in fact, does the Buffalo Police
10:32:32 11 Department have a web page relating to citizen
10:32:36 12 complaints --

10:32:36 13 **A.** Yes.

10:32:37 14 **Q.** -- about officer misconduct?

10:32:40 15 **A.** We have a web page, yes.

10:32:41 16 **Q.** And does that web page encourage
10:32:43 17 citizens to write to the police commissioner with
10:32:45 18 complaints of police misconduct?

10:32:48 19 **A.** It encouraged them to write to the
10:32:53 20 Buffalo Police Department. They can write to me.

10:32:54 21 **Q.** Okay.

10:32:54 22 **A.** They can give me --

10:32:55 23 **Q.** Do you know if the web page currently

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10:32:57 1 actually says that the letter should be addressed
10:33:00 2 to the police commissioner?

10:33:01 3 A. I can't -- I'm not sure.

10:33:04 4 Q. Do you know if it ever did?

10:33:05 5 A. The web page?

10:33:06 6 Q. Yes. Specifically relating to
10:33:10 7 complaints of police misconduct indicating that
10:33:12 8 letters should be sent directly to the police
10:33:14 9 commissioner.

10:33:14 10 A. I -- I would think it'd probably say to
10:33:20 11 send to internal affairs. Yeah, it probably would
10:33:22 12 say that. I'm not sure, though.

10:33:23 13 Q. But one way or the other, a written
10:33:25 14 complaint is another way that a complaint of police
10:33:29 15 officer misconduct could come into the Buffalo
10:33:32 16 Police Department and the Internal Affairs
10:33:34 17 Division; is that right?

10:33:36 18 A. Yes.

10:33:36 19 Q. All right. Is there a policy or
10:33:37 20 procedure within the police department with respect
10:33:42 21 to when an actual IAD investigation will be opened
10:33:45 22 or commenced?

10:33:46 23 A. Internal affairs -- an investigation

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10:33:52 1 will be -- will start as soon as they make contact
10:33:56 2 with the individual that's forwarding the
10:34:00 3 complaint.

10:34:01 4 Q. When you say as soon as, I mean, I
10:34:04 5 assume if somebody comes into a district and makes
10:34:08 6 a live person to person complaint, does that count
10:34:11 7 as -- as opening the IAD investigation then?

10:34:13 8 A. It's -- it doesn't start the clock.
10:34:18 9 The clock starts when internal affairs -- when he
10:34:22 10 gets to internal affairs office.

10:34:23 11 Q. All right. So the procedure would be
10:34:25 12 if somebody goes into the district and makes a
10:34:27 13 complaint, it's probably going to be made to a
10:34:29 14 sergeant or a lieutenant; is that right?

10:34:32 15 A. It would probably be made to a
10:34:34 16 lieutenant or a captain.

10:34:35 17 Q. Okay.

10:34:35 18 A. We don't have sergeants, you know,
10:34:38 19 patrol sergeants. We just have sergeants for
10:34:41 20 detectives.

10:34:42 21 Q. And so -- okay. So within a district,
10:34:44 22 during a given shift or platoon, there's going to
10:34:48 23 be a lieutenant for every -- every shift; is that

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10:34:52 1 right?

10:34:52 2 A. Yes.

10:34:52 3 Q. Is there also a captain for every shift
10:34:54 4 or is that only part of the time?

10:34:56 5 A. There's not a captain for every shift,
10:35:00 6 but that's -- during the day and afternoon there's
10:35:03 7 captains. And midnight -- yeah, there is them now.
10:35:08 8 Now there is some captains working midnights, yes.

10:35:11 9 Q. Okay. But there always will be a
10:35:13 10 lieutenant?

10:35:13 11 A. Yes, always.

10:35:14 12 Q. So if somebody comes in to complain to
10:35:16 13 one of the City of Buffalo Police Department
10:35:19 14 districts any hour of the day, they're going to
10:35:21 15 find a lieutenant there?

10:35:22 16 A. Yes.

10:35:22 17 Q. And they can make and are supposed to
10:35:25 18 make a complaint of police misconduct, if they have
10:35:27 19 one, to that officer; is that right?

10:35:29 20 A. Yes. They would ask -- they would ask
10:35:32 21 for the supervisor and that lieutenant will take
10:35:34 22 that --

10:35:34 23 Q. Or possibly a captain --

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10:35:35 1 A. Captain, yes.

10:35:36 2 Q. -- if one happens to be there?

10:35:38 3 A. Yes.

10:35:38 4 Q. Okay. And then the procedure would be
10:35:39 5 that once the complaint is taken by the officer in
10:35:44 6 the pre -- the district rather, it would then be
10:35:47 7 relayed to IAD?

10:35:49 8 A. Yes.

10:35:50 9 Q. And IAD works out of police
10:35:53 10 headquarters?

10:35:53 11 A. Yes.

10:35:53 12 Q. And would an investigation and a file
10:35:57 13 be opened at that time?

10:35:58 14 A. IAD will contact the complainant and
10:36:01 15 then that's when the file will be opened up. They
10:36:04 16 will take a statement from them, we'll ask them to
10:36:07 17 come in to give a statement, and that's when the
10:36:10 18 clock starts --

10:36:11 19 Q. Okay.

10:36:11 20 A. -- going.

10:36:11 21 Q. You mentioned the clock a couple of
10:36:13 22 times. Is there -- is there a -- a timeframe in
10:36:16 23 which an IAD investigation is supposed to be

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10:36:19 1 completed?

10:36:20 2 A. No, no. I mean --

10:36:21 3 Q. So what was your reference to clock? I
10:36:24 4 didn't get that.

10:36:24 5 A. I mean -- what I mean by the clock is
10:36:26 6 it will start when it -- the investigation will
10:36:28 7 start at that particular time.

10:36:30 8 Q. I see. So the initial complaint to the
10:36:33 9 district wouldn't necessarily get an IAD file open,
10:36:36 10 it requires IAD contact with the complainant?

10:36:39 11 A. Yes.

10:36:40 12 Q. All right. Now, would a -- would an
10:36:42 13 IAD file be opened every time or is there
10:36:47 14 discretion to say no, we're not even going to open
10:36:50 15 an IAD investigation?

10:36:51 16 A. What do you mean by every time?

10:36:53 17 Q. Well, somebody goes into a district,
10:36:55 18 makes a complaint --

19 A. Mm-hmm.

10:36:56 20 Q. -- IAD follows up, reaches the person
10:36:58 21 by phone --

22 A. Mm-hmm.

10:36:58 23 Q. -- would that automatically result in

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10:37:00 1 an IAD investigation file being opened under a file
10:37:04 2 number or would the IAD investigating officer have
10:37:06 3 the ability to say no, we're not going to open one?

10:37:10 4 **A.** That would be the inspector. The
10:37:15 5 inspector will see if it's something that can be
10:37:19 6 handled at a district level. If not, then he would
10:37:23 7 open up a case in internal affairs.

10:37:26 8 **Q.** We talked about several methods by
10:37:28 9 which a citizen making a complaint of police
10:37:31 10 misconduct can make it to the police department.

10:37:33 11 Are there any others that you can think of
10:37:36 12 that trigger the opening of an IAD investigation?

10:37:39 13 **A.** Complaints.

10:37:39 14 **Q.** Any other methods of complaint? For
10:37:43 15 example, if a Notice of Claim involving police
10:37:46 16 misconduct is served on the city, will that result
10:37:49 17 in the opening of an IAD investigation?

10:37:51 18 **A.** I think there would -- if it's a Notice
10:37:56 19 of Claim served on -- I think the inspector would
10:37:59 20 probably reach -- reach out to corporate counsel
10:38:04 21 and probably -- not probably, will -- will discuss
10:38:08 22 with them this Notice of Claim.

10:38:10 23 **Q.** All right. But my question was whether

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10:38:12 1 an IAD investigation would actually be opened to
10:38:16 2 address allegations of police misconduct that are
10:38:19 3 set forth in a Notice of Claim.

10:38:21 4 **A.** Go back over that again.

10:38:27 5 **Q.** You're familiar with Notices of Claim,
10:38:29 6 right?

10:38:29 7 **A.** Right.

10:38:30 8 **Q.** You're aware that when somebody wants
10:38:32 9 to sue the City of Buffalo --

10:38:33 10 **A.** Right.

10:38:33 11 **Q.** -- for misconduct of its police
10:38:36 12 department, that a legal document known as a Notice
10:38:39 13 of Claim must be served on the City of Buffalo,
10:38:42 14 correct?

10:38:42 15 **A.** Right.

10:38:42 16 **Q.** And you've seen those?

10:38:44 17 **A.** Mm-hmm.

10:38:45 18 **Q.** That's a -- you need to answer
10:38:46 19 verbally.

10:38:47 20 **MS. HUGGINS:** A verbal answer.

10:38:48 21 **THE WITNESS:** Oh.

10:38:48 22 **MS. HUGGINS:** She can't record an mm-hmm.

23 **BY MR. RUPP:**

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10:38:50 1 Q. That's okay, you're doing fine. That
10:38:51 2 was the first one. So --

3 A. Yes.

10:38:53 4 Q. All right. You've seen those and
10:38:54 5 you've read them and sometimes they contain
10:38:56 6 allegations of police misconduct, correct?

10:38:59 7 A. Yes.

10:38:59 8 Q. All right. And my question is would
10:39:02 9 those sworn allegations in a Notice of Claim result
10:39:07 10 in the opening of an IAD investigation file?

10:39:10 11 A. Some of them have. I'm not going to
10:39:17 12 say all of them. I know that we have -- there has
10:39:23 13 been Notice of Claim and yeah, it would open up an
10:39:28 14 IAD file because we do discuss them.

10:39:30 15 Q. Okay. And you're aware that the next
10:39:32 16 step in the process after there's perhaps an
10:39:36 17 examination of the complainant as part of the 50h
10:39:41 18 Notice of Claim process, then there's a lawsuit
10:39:43 19 often commenced against the city, are you aware of
10:39:46 20 that sequence of events?

10:39:48 21 A. Yes.

10:39:48 22 Q. You're aware then essentially that a
10:39:50 23 Notice of Claim often leads to the commencement of

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10:39:53 1 a lawsuit against the city; is that right?

10:39:54 2 **A.** Yes.

10:39:55 3 **Q.** All right. And even if an IAD
10:39:57 4 investigation was not opened at the time the Notice
10:40:00 5 of Claim is received, would an IAD investigation be
10:40:04 6 opened any time a lawsuit alleging police
10:40:07 7 misconduct is actually commenced against the City
10:40:11 8 of Buffalo?

10:40:11 9 **MS. HUGGINS:** Form. You can answer.

10:40:13 10 **THE WITNESS:** Yes.

10:40:14 11 **BY MR. RUPP:**

10:40:15 12 **Q.** All right. So let me ask it again
10:40:16 13 because there was a form objection. Would -- would
10:40:19 14 any complaint, legal complaint brought against the
10:40:23 15 City of Buffalo in a court alleging police
10:40:27 16 misconduct, result in the opening of an IAD
10:40:29 17 investigation if one had not already been opened
10:40:34 18 beforehand?

10:40:35 19 **A.** Yes.

10:40:35 20 **Q.** Okay. Do you know -- and would that be
10:40:37 21 following Buffalo Police Department procedures to
10:40:40 22 open an IAD investigation when a complaint is
10:40:44 23 received by the city if one has not already been

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10:40:48 1 opened for that same incident?

10:40:49 2 **A.** Say it again.

10:40:50 3 **Q.** Would that -- is that in compliance
10:40:53 4 with Buffalo Police Department procedures to open
10:40:56 5 an IAD investigation when a complaint is received
10:40:59 6 in a lawsuit if one has not already been opened by
10:41:03 7 some other means?

10:41:04 8 **MS. HUGGINS:** Form.

10:41:07 9 **BY MR. RUPP:**

10:41:07 10 **Q.** Let me ask you this since there's a
10:41:09 11 form objection. Are you familiar with the Buffalo
10:41:12 12 Police procedures manual?

10:41:13 13 **A.** Yeah, manual of procedure. Yes.

10:41:14 14 **Q.** Okay. Did you play any role in -- in
10:41:16 15 drafting those procedures?

10:41:18 16 **A.** No.

10:41:19 17 **Q.** All right. Have you -- have you
10:41:20 18 reviewed the procedures?

10:41:23 19 **A.** I -- yeah, I look at them.

10:41:25 20 **Q.** There's several hundred pages of
10:41:27 21 procedures, right?

10:41:28 22 **A.** Yeah.

10:41:28 23 **Q.** And some of them relate to IAD; is that

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10:41:31 1 correct?

10:41:31 2 A. Yes.

10:41:31 3 Q. And when IAD should open an
10:41:34 4 investigation; is that right?

10:41:34 5 A. Yes.

10:41:35 6 Q. All right. And if there is a citizen's
10:41:40 7 complaint of police misconduct that's properly
10:41:42 8 presented to IAD or made in the form of a lawsuit
10:41:44 9 against the city, IAD in compliance with this
10:41:47 10 manual is supposed to open an investigation,
10:41:50 11 correct?

10:41:50 12 A. If it's reported, yes.

10:41:52 13 Q. Okay. And certainly if it's in a
10:41:55 14 lawsuit commenced against the city and corporation
10:41:57 15 counsel has to get involved to defend the city
10:42:00 16 against allegations of police misconduct, that
10:42:03 17 would be properly reported, right?

10:42:05 18 A. I'm getting a little confused here, but
10:42:10 19 if it's reported to internal affairs, we will open
10:42:13 20 up a case.

10:42:14 21 Q. All right. So in other words, there's
10:42:15 22 no discretion to say no, I don't want to open your
10:42:18 23 complaint of police misconduct?

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10:42:21 1 **A.** No, you can't -- you have to open up --
10:42:23 2 if you come in to make a complaint, internal
10:42:26 3 affairs have to look into that complaint.

10:42:28 4 **Q.** And if you sue a complaint or serve a
10:42:31 5 Notice of Claim alleging police misconduct, again,
10:42:33 6 that would open an IAD investigation, correct?

10:42:35 7 **A.** It would -- IAD will -- we would --
10:42:45 8 internal affairs, we would -- if the complainant --
10:42:48 9 we have to have a complaint.

10:42:50 10 **Q.** Right. I'm talking about an actual
10:42:52 11 Notice of Claim, a written legal document where the
10:42:57 12 complainant makes complaints of police misconduct.

10:43:01 13 Could be police brutality, could be a
10:43:03 14 failure to follow procedures. They're making it in
10:43:06 15 a written sworn legal document and having it served
10:43:08 16 on the city to commence the lawsuit process.

10:43:10 17 **A.** Okay. If it's written and it's given
10:43:12 18 to internal affairs, yes, internal affairs will
10:43:15 19 look into that.

10:43:16 20 **Q.** Well, if it's served on the city, it
10:43:18 21 would be given to internal affairs, right? If it
10:43:19 22 involved allegations of police misconduct, right?

10:43:21 23 **A.** Yes.

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10:43:21 1 Q. All right. And even if for some reason
10:43:24 2 an IAD investigation wasn't opened when the Notice
10:43:27 3 of Claim was served, when an actual lawsuit comes
10:43:30 4 in to the city seeking money damages alleging
10:43:33 5 police misconduct, certainly at that point IAD
10:43:36 6 would open an investigation if one had not already
10:43:39 7 been opened before, right?

10:43:40 8 A. Yes.

10:43:41 9 Q. And that would be in compliance with
10:43:42 10 your understanding of what's required of IAD in the
10:43:48 11 police procedures manual for the City of Buffalo;
10:43:50 12 is that right?

10:43:50 13 A. Yes.

10:43:50 14 Q. And there would never be any reason why
10:43:53 15 allegations of police misconduct in a Notice of
10:43:56 16 Claim or a complaint or both, would just be ignored
10:43:59 17 by IAD and no investigation would be opened, would
10:44:02 18 you agree with me?

10:44:03 19 A. Yes.

10:44:03 20 Q. And if that happened, that would be a
10:44:05 21 violation of police procedures, would it not?

10:44:08 22 A. Yes.

10:44:08 23 Q. All right. And you wouldn't want to

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10:44:09 1 see that happen as the police commissioner for the
10:44:12 2 City of Buffalo, am I correct?

10:44:13 3 **A.** Yes.

10:44:14 4 **Q.** And if you learned of a situation where
10:44:17 5 a citizen complaint made in a Notice of Claim or a
10:44:21 6 complaint of multiple instance of police misconduct
10:44:24 7 within your department were made in formal legal
10:44:28 8 documents and no IAD investigation was commenced,
10:44:31 9 you would have something to say about that as the
10:44:33 10 commissioner of the City of Buffalo Police
10:44:36 11 Department, am I right?

10:44:37 12 **A.** Yes.

10:44:37 13 **Q.** And you would have some discussions
10:44:40 14 with Inspector Rosenswie; is that correct?

10:44:44 15 **A.** Yes.

10:44:45 16 **Q.** And you would tell him, would you not,
10:44:47 17 that in the future when there's a written legal
10:44:52 18 complaint against the City of Buffalo involving
10:44:54 19 allegations -- multiple allegations of police
10:44:57 20 misconduct, you are to open an IAD file and begin
10:44:59 21 investigating immediately, correct?

10:45:02 22 **MS. HUGGINS:** Form. You can answer.

10:45:04 23 **BY MR. RUPP:**

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10:45:04 1 Q. Well, you tell me. What would you tell
10:45:06 2 the inspector if you found an incident where a
10:45:09 3 lawsuit was commenced against the City of Buffalo
10:45:12 4 involving multiple incidents of police misconduct,
10:45:14 5 but there was no actual IAD investigation
10:45:17 6 commenced?

10:45:18 7 A. I would -- he -- I would tell him to
10:45:23 8 open up an investigation.

10:45:24 9 Q. All right. And would you tell him in
10:45:25 10 the future to open up whenever his department is
10:45:27 11 notified of lawsuits against the city?

10:45:29 12 A. Yes.

10:45:29 13 Q. All right. And you would expect that a
10:45:31 14 lawsuit involving police misconduct would go to
10:45:34 15 IAD, right?

10:45:34 16 A. Yes.

10:45:35 17 Q. And what about a letter from a citizen
10:45:38 18 following the procedures that might or might not be
10:45:41 19 set forth in the Buffalo Police Department's
10:45:44 20 website alleging misconduct, would you expect that
10:45:48 21 IAD would reach out to the sender of that letter
10:45:50 22 and ask for the information required to begin the
10:45:52 23 investigation?

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10:45:53 1 A. Yes.

10:45:53 2 Q. And if you found that letters were
10:45:55 3 routinely being ignored by the City of Buffalo
10:45:59 4 Police Department and no IAD investigations were
10:46:01 5 being commenced, no contact was being made, would
10:46:04 6 you have similar discussions with the inspector?

10:46:06 7 A. Yes.

10:46:07 8 Q. And would you tell him to reach out to
10:46:09 9 every single person who's made a complaint of
10:46:11 10 police misconduct against the City of Buffalo
10:46:14 11 Police Department?

10:46:14 12 A. Yes.

10:46:16 13 Q. Have you learned in your tenure as
10:46:18 14 police commissioner, Mr. Lockwood, of incidents
10:46:22 15 where the City of Buffalo Police Department and its
10:46:26 16 IAD division have not opened investigations of --
10:46:30 17 involving written complaints, either in lawsuits or
10:46:32 18 in letters, of police misconduct?

10:46:35 19 A. No.

10:46:37 20 Q. You have not heard of a single incident
10:46:39 21 in the nearly three years that you've been the
10:46:41 22 police commissioner where citizen complaints in
10:46:46 23 formal written legal documents or letters were

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10:46:47 1 ignored?

10:46:48 2 A. I have heard it. I have heard people
10:46:51 3 when you're -- when you're at meetings, but -- and
10:46:56 4 when I questioned internal affairs about it, they
10:46:59 5 said they haven't received the -- these -- these
10:47:03 6 complaints.

10:47:03 7 Q. All right. But under no circumstances
10:47:05 8 would there be a situation where a lawsuit that's
10:47:08 9 filed against the city and where corporation
10:47:11 10 counsel's been assigned to defend it, that would be
10:47:13 11 known to the City of Buffalo, correct?

10:47:15 12 A. Yes.

10:47:15 13 Q. And that would be known to the police
10:47:18 14 department, right?

10:47:18 15 A. Yes.

10:47:19 16 Q. And that should be transmitted to IAD,
10:47:21 17 correct?

10:47:21 18 A. Yes.

10:47:21 19 Q. And a file should be opened?

10:47:23 20 A. Yes.

10:47:24 21 Q. Every time?

10:47:26 22 A. Every time?

10:47:27 23 Q. Every time?

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10:47:28 1 A. Every time that there's a --

10:47:29 2 Q. That that happens.

10:47:30 3 A. Yes.

10:47:31 4 Q. All right. And that investigation
10:47:32 5 would be a full investigation following the
10:47:36 6 protocol set forth in the police manual, right?

10:47:38 7 A. Yes.

10:47:39 8 Q. And eventually, you as the head of the
10:47:44 9 Buffalo Police Department and its chief
10:47:47 10 disciplinarian, would know about the recommendation
10:47:50 11 of the police -- of the IAD investigator and make a
10:47:53 12 final call on it; is that right?

10:47:55 13 A. Yes.

10:47:55 14 Q. And that would involve a sit down
10:47:57 15 meeting with the investigator and perhaps others
10:47:59 16 and a review of all the information that was
10:48:02 17 gathered, am I correct?

10:48:03 18 A. Yes.

10:48:03 19 Q. And that would be true in every single
10:48:06 20 instance of an IAD investigation being opened for
10:48:09 21 incidents of police misconduct, correct?

10:48:11 22 A. Yes.

10:48:11 23 Q. There would be no exceptions to you

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10:48:14 1 sitting down with IAD and making the final judgment
10:48:17 2 call on whether to sustain the allegations or to
10:48:21 3 find them not sustained; is that right?

10:48:23 4 **A.** Correct.

10:48:24 5 **Q.** And when you engage in that process,
10:48:28 6 Mr. Lockwood, what are the potential outcomes of an
10:48:32 7 IAD investigation?

10:48:35 8 Can you tell me what are the -- the
10:48:39 9 different resolutions that can be reached in that
10:48:43 10 final meeting?

10:48:43 11 **A.** They can be exonerated, they can be
10:48:49 12 sustained, not sustained, and unfounded.

10:48:53 13 **Q.** All right. I want to ask you about the
10:48:59 14 differences between some of those. Obviously
10:49:01 15 sustained means that the complaint that was brought
10:49:04 16 was proven to be true; is that right?

10:49:06 17 **A.** The allegations was proven, yes.

10:49:09 18 **Q.** And that would lead you down a path of
10:49:11 19 what are you going to do about that in terms of
10:49:14 20 officer discipline; is that right?

10:49:15 21 **A.** Yes.

10:49:15 22 **Q.** All right. The other three categories
10:49:18 23 of not sustained, unfounded, and exonerated, in

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10:49:22 1 those -- all three of those instances, the police
10:49:27 2 officers against whom the complaints of misconduct
10:49:29 3 were made were cleared; is that correct?

10:49:34 4 **MS. HUGGINS:** Form.

10:49:34 5 **BY MR. RUPP:**

10:49:35 6 **Q.** All right. Strike that since there's a
10:49:37 7 form objection.

10:49:37 8 Tell me what not sustained means.

10:49:39 9 **A.** Not sustained means there -- the
10:49:42 10 allegations happened, but there's not enough proof
10:49:46 11 there to sustain.

10:49:50 12 **Q.** So can you -- can you provide me with
10:49:53 13 an example of that? The allegations happened, but
10:49:56 14 there's not enough proof of what?

10:49:58 15 **A.** There's not enough proof to -- if the
10:50:03 16 charge -- if the charge for the officer to be --
10:50:06 17 his conduct -- to prove that his conduct wasn't up
10:50:09 18 to standard with Buffalo Police, you know, conduct.

10:50:13 19 **Q.** So in other words, what happened --
10:50:17 20 what the complainant said happened, happened, but
10:50:19 21 it didn't necessarily violate the procedures manual
10:50:23 22 or the training of the officer; is that right?

10:50:25 23 **A.** Right. The -- yes.

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10:50:26 1 Q. That's a not sustained finding?

10:50:28 2 A. Right.

10:50:29 3 Q. Okay. What is an exonerated finding?

10:50:31 4 A. Exonerate is saying that it did happen,
10:50:34 5 but the -- the officer was proper in his procedures
10:50:38 6 of what he did.

10:50:41 7 Q. All right. I'm confused, though.
10:50:42 8 What's the difference between exonerated and not
10:50:45 9 sustained then?

10:50:45 10 A. Not sustained -- exonerated means that
10:50:49 11 it happened and the officer was proper in his
10:50:52 12 procedures in what he did.

10:50:53 13 Q. Okay.

10:50:54 14 A. Not sustained means the allegation
10:50:59 15 could -- I mean, the allegation -- it's not enough
10:51:03 16 evidence to sustain what happened here.

10:51:05 17 Q. I see. Okay. And what about
10:51:07 18 unfounded?

10:51:08 19 A. Unfounded --

10:51:10 20 Q. Excuse me.

10:51:11 21 A. -- is that we have no recollection --
10:51:14 22 it's nothing there to sustain these charges of
10:51:17 23 anything. It's just unfounded.

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10:51:18 1 Q. Unfounded could include classes of
10:51:22 2 complaints where it's not even proven that what was
10:51:24 3 said happened even happened; is that right?

10:51:26 4 A. Right. It could be you -- the officer
10:51:29 5 wasn't even there, you know. You can have a
10:51:32 6 complaint on the officer and the officer wasn't
10:51:34 7 even -- it could be wasn't even working that day.
10:51:38 8 So --

10:51:39 9 Q. Right.

10:51:40 10 A. -- you know, it's unfounded.

10:51:42 11 Q. Now, in the instances where you have
10:51:46 12 charges that are sustained -- let me ask you this.

10:51:48 13 When a person makes a complaint against the
10:51:51 14 City of Buffalo for alleged misconduct of a police
10:51:56 15 officer, do they oftentimes cite what provisions of
10:52:05 16 the police manual they think were violated?

10:52:07 17 MS. HUGGINS: Form.

10:52:08 18 THE WITNESS: You -- can you --

10:52:11 19 BY MR. RUPP:

10:52:11 20 Q. All right. So do -- when you receive a
10:52:13 21 complaint from a citizen, do they usually quote
10:52:17 22 from the police manual and say I think this officer
10:52:19 23 engaged in misconduct because if you look at

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10:52:22 1 Section 4.19, they shouldn't have done what they
10:52:25 2 did to me?

10:52:26 3 **A.** No.

10:52:27 4 **Q.** All right. So you're aware that
10:52:28 5 somebody making a complaint to the City of Buffalo
10:52:31 6 Police Department might make allegations of facts
10:52:33 7 of what happened, but IAD needs to be the one to
10:52:37 8 determine whether that constitutes a violation of
10:52:41 9 the officer's responsibilities and training; is
10:52:43 10 that right?

10:52:43 11 **A.** They -- well, the complainant make the
10:52:48 12 complaint and IAD would go out and investigate to
10:52:51 13 see if -- if the complaint that was made actually
10:52:56 14 happened and is there enough -- did the officer
10:53:02 15 violate any rules of the departmental --
10:53:06 16 departmental rules.

10:53:06 17 **Q.** Okay. I guess that's my question.
10:53:08 18 Will the IAD investigate violations of other
10:53:15 19 departmental rules than perhaps what the
10:53:17 20 complainant said in their letter or statement?

10:53:20 21 **MS. HUGGINS:** Form.

10:53:22 22 **BY MR. RUPP:**

10:53:22 23 **Q.** Let me give you an example. Suppose I

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10:53:24 1 write a complaint letter to you as police
10:53:26 2 commissioner and I say this officer struck me and
10:53:33 3 used excessive force.

10:53:33 4 IAD investigates and finds that part of it
10:53:34 5 to be unfounded, but they find something else that
10:53:36 6 the officer did in the course of the arrest or some
10:53:40 7 problem with the paperwork or something that also
10:53:42 8 would -- would amount to misconduct that the
10:53:45 9 complainant never complained about. Will IAD look
10:53:49 10 at that as well?

10:53:49 11 A. Yes.

10:53:50 12 Q. Okay. So the complaint made by the
10:53:52 13 complainant is not -- does not define the entire
10:53:55 14 scope of the IAD investigation; is that correct?

10:53:58 15 A. That's correct.

10:54:01 16 Q. All right. And so, for example, let's
10:54:03 17 say IAD investigates a complaint and one of the
10:54:07 18 police officer's lies to IAD.

10:54:10 19 If it's sworn, they perjur themselves, if
10:54:16 20 it's unsworn, they simply lied to lead the IAD
10:54:17 21 investigator astray. Has that ever happened?

10:54:20 22 A. Yes, it has happened before.

10:54:23 23 Q. All right. And if IAD concluded that

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10:54:26 1 the officer had lied, even if the complaints made
10:54:29 2 were deemed unfounded, would that officer face
10:54:32 3 discipline?

10:54:33 4 A. Being untruthful, yes.

10:54:36 5 Q. All right. And is that something
10:54:38 6 that's important to you as the chief disciplinarian
10:54:42 7 within the Buffalo Police Department that officers
10:54:43 8 are truthful?

10:54:44 9 A. Yes.

10:54:44 10 Q. Do you expect officers to be truthful
10:54:46 11 when they're testifying in court?

10:54:48 12 A. Yes.

10:54:48 13 Q. Do you expect officers to be truthful
10:54:50 14 when they are signing sworn depositions in support
10:54:55 15 of charges?

10:54:55 16 A. Yes.

10:54:56 17 Q. Do you expect officers to be truthful
10:54:58 18 in the bringing of those charges?

10:55:00 19 A. Yes.

10:55:00 20 Q. And is that something that is
10:55:01 21 reinforced from your office on down through the
10:55:05 22 rank and file at the Buffalo Police Department,
10:55:07 23 Mr. Lockwood?

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10:55:07 1 **A.** If we find out the officer has been
10:55:11 2 untruthful, yes.

10:55:12 3 **Q.** All right. And what types of
10:55:15 4 consequences can an untruthful officer face in
10:55:18 5 connection with their duties?

10:55:19 6 **A.** They can face anything from a reprimand
10:55:21 7 to termination.

10:55:22 8 **Q.** And when you are reviewing with IAD the
10:55:27 9 results of an IAD investigation, are you evaluating
10:55:32 10 for the truth and veracity of the officers who are
10:55:36 11 under investigation and what they told IAD?

10:55:38 12 **A.** Yes.

10:55:39 13 **Q.** And if you independently of IAD have a
10:55:44 14 question concerning the truth or veracity of a
10:55:47 15 statement made by an officer under investigation,
10:55:50 16 do you have the authority as the police
10:55:52 17 commissioner in the City of Buffalo to make a
10:55:54 18 determination that that officer should be subject
10:55:56 19 to discipline?

10:55:57 20 **A.** Repeat that again.

10:56:00 21 **Q.** If you find in the course of reviewing
10:56:02 22 the results of an IAD investigation that an officer
10:56:06 23 under investigation has not been truthful with IAD,

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10:56:09 1 do you have the ability as the commissioner of the
10:56:13 2 Buffalo Police Department to recommend that person
10:56:15 3 or to impose discipline on that person?

10:56:18 4 **A.** Yes.

10:56:18 5 **Q.** And that would be independent of what
10:56:21 6 IAD recommended in their final report to you; is
10:56:26 7 that right?

10:56:26 8 **MS. HUGGINS:** Form. You can answer.

10:56:27 9 **THE WITNESS:** They would -- they don't
10:56:32 10 recommend. They just give me the facts and, you
10:56:37 11 know, they -- if -- if it's different -- if they
10:56:44 12 give one statement and give something totally
10:56:47 13 different, the IAD will bring that up in the
10:56:50 14 hearing that they gave two versions of, you know,
10:56:53 15 the statement.

10:56:54 16 **BY MR. RUPP:**

10:56:55 17 **Q.** And you would be able to evaluate that
10:56:56 18 yourself; is that right?

10:56:57 19 **A.** Yes.

10:56:58 20 **Q.** All right.

10:56:58 21 **A.** Yes.

10:56:58 22 **Q.** You said IAD does not make
10:57:00 23 recommendations; is that right?

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10:57:02 1 **A.** No, they don't -- no, they don't come
10:57:04 2 in. They just give me facts.

10:57:06 3 **Q.** All right. And what do those -- how do
10:57:09 4 they present those facts to you?

10:57:11 5 **A.** An example like I just said, they
10:57:17 6 would -- if the officer gave different versions of
10:57:22 7 a statement one time when they -- and the first
10:57:26 8 time they bring them in or if they bring them in a
10:57:29 9 second time and they give a different version of
10:57:31 10 it, they will put -- you know, let me know that
10:57:34 11 during file review that he gave different versions
10:57:37 12 of this.

10:57:38 13 And that, you know -- you know, when you --
10:57:42 14 when you give the different versions, then that,
10:57:44 15 you know, strikes a light bulb that is -- is he
10:57:48 16 telling the truth.

10:57:49 17 **Q.** What about situations where the
10:57:51 18 officer's version is contradicted by other
10:57:55 19 evidence?

10:57:58 20 **MS. HUGGINS:** Form.

10:58:00 21 **THE WITNESS:** That's --

10:58:00 22 **BY MR. RUPP:**

10:58:01 23 **Q.** What do you do when the officer is

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10:58:02 1 given a version, but the other evidence in the file
10:58:05 2 indicates that that version is not true?

10:58:06 3 **A.** If the officer's statement doesn't
10:58:11 4 match the evidence, then -- then we have to -- if
10:58:24 5 what he's saying doesn't match -- and it depends on
10:58:27 6 what the evidence if it's video or whatever.

10:58:31 7 If he's saying one thing and it's showing
10:58:34 8 something totally different, then the officer's
10:58:36 9 probably not being truthful.

10:58:38 10 **Q.** And what happens in that situation when
10:58:40 11 an officer's not being truthful?

10:58:42 12 **A.** Well, the officer can be brought up on
10:58:45 13 charges then.

10:58:45 14 **Q.** All right. Would the officer be
10:58:48 15 brought up on charges if you concluded that the
10:58:49 16 officer was not truthful?

10:58:49 17 **A.** Yes.

10:58:49 18 **Q.** Every time?

10:58:50 19 **A.** What do you mean every time?

10:58:52 20 **Q.** Every time that you find an officer has
10:58:53 21 been untruthful in connection with an IAD
10:58:56 22 investigation, would you bring that officer up on
10:58:59 23 charges?

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10:59:00 1 A. Yes.

10:59:00 2 Q. And you mentioned video evidence, is
10:59:04 3 video evidence important to the City of Buffalo
10:59:07 4 Police Department?

10:59:07 5 A. Yes, it is.

10:59:08 6 Q. All right. And city police officers
10:59:10 7 are now, in some instances at least, wearing body
10:59:14 8 cams; is that correct?

10:59:14 9 A. Yes.

10:59:15 10 Q. And -- and is that -- has that been
10:59:19 11 deployed to all of the rank and file?

10:59:21 12 A. Yes.

10:59:21 13 Q. So every -- when did that go into
10:59:26 14 effect, Mr. Lockwood?

10:59:29 15 A. I believe the video -- we start -- we
10:59:36 16 start the pilot program I believe in 2017. I --
10:59:42 17 I'm not sure. It was between 2017, 2018 we started
10:59:45 18 the pilot.

10:59:46 19 Q. And is it still being piloted or is it
10:59:49 20 in full implementation right now?

10:59:51 21 A. It's in full implementation right now.

10:59:52 22 Q. How has that been going for the city
10:59:57 23 police department?

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10:59:57 1 **MS. HUGGINS:** Form.

10:59:57 2 **BY MR. RUPP:**

10:59:58 3 **Q.** You can answer.

10:59:58 4 **A.** It's been going -- it had this -- at
11:00:04 5 one time -- officers got to get used to it. And as
11:00:08 6 far as when the they cut the cameras on and a
11:00:12 7 couple of times they forget to cut the cameras on
11:00:14 8 and sometimes that -- you know, they -- they just
11:00:20 9 forget to cut them on. And, you know, it's -- you
11:00:23 10 just go -- you go through the learning process with
11:00:26 11 it.

11:00:27 12 **Q.** Are you in --

11:00:27 13 **A.** And --

11:00:28 14 **Q.** Are you in --

15 **A.** And --

11:00:29 16 **Q.** Go ahead.

11:00:29 17 **A.** No, I'm just saying as of right now it
11:00:32 18 seems to be working a little better now.

11:00:34 19 **Q.** Are you in favor of that program?

11:00:36 20 **A.** Yes.

11:00:36 21 **Q.** And do you believe that that program
11:00:38 22 can actually protect police officers against false
11:00:42 23 complaints?

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11:00:42 1 A. Yes.

11:00:42 2 Q. And has that been something that your
11:00:45 3 office has said to the rank and file of the Buffalo
11:00:49 4 Police Department --

11:00:49 5 A. Yes.

11:00:49 6 Q. -- this could be a good thing for you?

11:00:52 7 A. Yes.

11:00:52 8 Q. All right. And are police officers
11:00:54 9 encouraged to turn their cameras on when they're
11:00:57 10 interacting with citizens in -- in connection with
11:01:00 11 a call, for example?

11:01:01 12 A. Yes.

11:01:02 13 Q. All right. Are there ever examples
11:01:04 14 where they're not supposed to turn their cameras
11:01:07 15 on?

11:01:07 16 A. Yes.

11:01:07 17 Q. Okay. Well, what about other video
11:01:10 18 evidence, do you rely on surveillance videos and
11:01:16 19 cell phone videos taken by citizens in connection
11:01:19 20 with evaluating complaints that have resulted in an
11:01:23 21 opened IAD investigation?

11:01:25 22 A. Yes. We -- when they do the
11:01:30 23 investigation, they canvass the neighborhood and

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11:01:33 1 they look for homes or people who may have been --
11:01:38 2 witnessed who may have, you know, videoed it, have
11:01:41 3 videos on their homes. So yes, we look for those.

11:01:44 4 Q. And how important is -- is that type of
11:01:47 5 video evidence to you as the chief disciplinarian
11:01:53 6 within the Buffalo Police Department in evaluating
11:01:55 7 a citizen complaint that's resulted in an IAD
11:01:59 8 investigation?

11:02:00 9 A. It can help. It can help.

11:02:03 10 Q. Okay. And have you ever seen instances
11:02:04 11 where what an officer told IAD or represented in
11:02:09 12 sworn arrest records differed from what was shown
11:02:14 13 on video evidence?

11:02:15 14 A. Yes, it's -- yeah, I have seen officers
11:02:23 15 say this would happen and you look at the video
11:02:30 16 and, you know, you can -- it's hard to determine
11:02:35 17 if, you know, exactly what the officer said or what
11:02:40 18 the complainant is saying happened. It depends on
11:02:43 19 how good the video is --

11:02:44 20 Q. Are there ever cases when it's clear
11:02:46 21 and you can tell that something happened or didn't
11:02:49 22 happen and one story is correct and the other story
11:02:52 23 is incorrect?

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11:02:53 1 **A.** You're saying have I -- have that ever
11:02:57 2 happened?

11:02:58 3 **Q.** Yes.

11:02:59 4 **A.** No, not with me I haven't had that
11:03:01 5 issue.

11:03:01 6 **Q.** How many actual IAD investigations have
11:03:08 7 been brought to you as commissioner for you to make
11:03:11 8 the final call on officer discipline in your tenure
11:03:14 9 as Buffalo police commissioner?

11:03:15 10 **A.** Several. I don't -- I don't have a
11:03:18 11 number. They --

11:03:20 12 **Q.** Can you estimate for me are we talking
11:03:22 13 a handful, are we talking scores, 50, under 50?

11:03:27 14 **A.** I would say more than 50.

11:03:32 15 **Q.** And that's just in the a little bit
11:03:35 16 less than three years that you've served as police
11:03:38 17 commissioner; is that right?

11:03:39 18 **A.** Yes.

11:03:39 19 **Q.** And I think you told me earlier, each
11:03:41 20 and every one of those you sit down and evaluate
11:03:43 21 the evidence that's brought to you by IAD; is that
11:03:46 22 right?

11:03:46 23 **A.** Yes.

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11:03:46 1 Q. And that includes watching video if
11:03:49 2 it's available?

11:03:49 3 A. Yes.

11:03:50 4 Q. And reviewing photographs and other
11:03:51 5 records; is that correct?

11:03:52 6 A. Yes.

11:03:53 7 Q. How -- is that a significant part of
11:03:56 8 your job, Mr. Lockwood?

11:03:59 9 MS. HUGGINS: Form.

11:04:00 10 BY MR. RUPP:

11:04:00 11 Q. Is that an important part of your
11:04:02 12 position --

11:04:02 13 A. Yes.

11:04:02 14 Q. -- to do that?

11:04:03 15 A. Yes.

11:04:03 16 Q. Is it something you take seriously?

11:04:05 17 A. Yes.

11:04:05 18 Q. And what is your goal in sitting down
11:04:12 19 with IAD, you personally as the police
11:04:12 20 commissioner, what are you trying to accomplish in
11:04:13 21 doing that?

11:04:14 22 A. My goal is to find out if the officers
11:04:19 23 acted properly and if the complaint against --

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11:04:21 1 against them is a valid complaint.

11:04:23 2 Q. And you're not trying to whitewash
11:04:26 3 instances of police misconduct in those meetings
11:04:29 4 with IAD, are you?

11:04:30 5 A. No.

11:04:30 6 Q. All right. And you wouldn't do that,
11:04:32 7 would you?

11:04:32 8 A. No.

11:04:32 9 Q. Okay. So if you saw misconduct, you
11:04:34 10 would call it out; is that right?

11:04:35 11 A. Yes.

11:04:36 12 Q. Even if it was unpopular within the
11:04:38 13 department?

11:04:38 14 A. Yes.

11:04:38 15 Q. Even if it led to disciplining an
11:04:42 16 officer who's well liked?

11:04:44 17 A. Yes.

11:04:44 18 Q. Even if it led to bad publicity for the
11:04:46 19 City of Buffalo?

11:04:46 20 A. Yes.

11:04:47 21 Q. All right. None of those factors would
11:04:50 22 influence your determination as the chief
11:04:51 23 disciplinarian with the City of Buffalo Police

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11:04:52 1 Department to do the right thing; is that right?

11:04:54 2 **A.** Correct.

11:04:54 3 **Q.** And in the course of the 50 or more
11:04:59 4 investigations that you have made the final call
11:05:00 5 on, have you done the right thing in each one of
11:05:03 6 those?

11:05:03 7 **A.** I believe I have.

8 **THE REPORTER:** Can I just ask if we could
9 just slow down a little bit?

10 **MR. RUPP:** Sure.

11:05:08 11 **THE REPORTER:** Thank you.

11:05:08 12 **MS. HUGGINS:** Do you mind actually if we
11:05:10 13 just take a break? We've been going for about an
11:05:11 14 hour straight.

11:05:12 15 **MR. RUPP:** Sure.

16 **MS. HUGGINS:** I'm going to use the restroom.

17 **MR. RUPP:** Sure.

11:05:13 18 **MS. HUGGINS:** Thank you.

11:05:13 19 **THE VIDEOGRAPHER:** Okay. Going off the
11:05:14 20 record at 10:14 (sic).

11:05:17 21 (A recess was then taken.)

11:13:34 22 **THE VIDEOGRAPHER:** All right. If everyone's
11:13:38 23 ready, we are going back on the record, time is

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11:13:41 1 11:13.

11:13:43 2 **BY MR. RUPP:**

11:13:44 3 **Q.** Thank you, Tyler.

11:13:46 4 Mr. Lockwood, earlier in your testimony you
11:13:48 5 referenced the unions that you dealt with as first
11:13:50 6 deputy police commissioner back in the day and I
11:13:53 7 assume it's still the same.

11:13:55 8 And you mentioned 264, can you tell me what
11:13:58 9 union that is or what local is that for what union?

11:14:01 10 **A.** That union would be the more labor --
11:14:06 11 labor union, blue collar. It would be like the
11:14:11 12 garage mechanics and the cleaners and dispatchers.

11:14:16 13 **Q.** Okay. And how about 650?

11:14:18 14 **A.** 650 more white collar. That would be
11:14:22 15 the report technicians who -- report technicians,
11:14:26 16 more of secretary jobs.

11:14:27 17 **Q.** Do you know what actual is -- actually
11:14:30 18 is the name of the unions that those are locals to?

11:14:33 19 **A.** I just knew them and just referred to
11:14:37 20 them by Locals 264 and 650.

11:14:40 21 **Q.** And the PDA is what?

11:14:42 22 **A.** Police Benevolent Association. That's
11:14:47 23 the officer's union.

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11:14:48 1 Q. Okay. And -- and is every officer in
11:14:50 2 the City of Buffalo Police Department a member of
11:14:53 3 the PBA?

11:14:54 4 A. I'm not going to -- no. No, I think
11:14:59 5 there's one individual that is not a member of the
11:15:02 6 PBA.

11:15:03 7 Q. Okay. But of the other 749, they're
11:15:05 8 all members; is that right?

11:15:06 9 A. No, I'm not in the union.

11:15:08 10 Q. Not the highest brass; is that right?

11:15:11 11 A. Right. It exempts --

11:15:13 12 Q. Did you --

11:15:13 13 MS. HUGGINS: Whoa.

11:15:13 14 MR. RUPP: Go ahead. If you --

11:15:15 15 MS. HUGGINS: You can finish.

11:15:15 16 BY MR. RUPP:

11:15:16 17 Q. If you want to add something, go ahead.

11:15:18 18 A. No, I'm not part of a union.

11:15:19 19 Q. Okay. And when did you cease being
11:15:21 20 part of the union?

11:15:22 21 A. In 2006.

11:15:24 22 Q. When you became first deputy police
11:15:26 23 commissioner?

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11:15:26 1 A. Yes.

11:15:27 2 Q. All right. But you were a member of
11:15:30 3 the PBA before that?

11:15:31 4 A. Yes.

11:15:32 5 Q. Okay. And the PBA is the -- among
11:15:36 6 other things, it's the bargaining unit that
11:15:39 7 negotiates -- negotiates the police contract with
11:15:42 8 the City of Buffalo; is that right?

11:15:43 9 A. Yes.

11:15:43 10 Q. Okay. Does the PBA also have any role
11:15:47 11 in connection with officer misconduct or
11:15:51 12 discipline?

11:15:51 13 A. They represent the officers.

11:15:52 14 Q. Okay. Do they also hold the records
11:15:55 15 of -- of misconduct for individual officers, is
11:15:59 16 that -- does the PBA have those records?

11:16:01 17 A. I don't think so, no.

11:16:07 18 Q. Okay. So the outcome of IAD
11:16:12 19 investigations with respect to a particular
11:16:12 20 officer, are those maintained at Buffalo Police
11:16:15 21 headquarters?

11:16:15 22 A. Yes.

11:16:15 23 Q. Can you access those records when you

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11:16:17 1 want to see them?

11:16:18 2 A. Yes.

11:16:18 3 Q. All right. And have those records
11:16:20 4 recently been the subject of court issues and --
11:16:24 5 and new legislation from the governor's office
11:16:27 6 about whether they should be released or not?

11:16:30 7 A. Yes.

11:16:31 8 Q. Okay. And are you aware of the recent
11:16:34 9 release of what have been called the top 10 lists
11:16:37 10 of officers who are most frequently accused of
11:16:41 11 either excessive force or just generally citizen
11:16:44 12 complaints?

11:16:44 13 A. I'm not familiar with that.

11:16:45 14 Q. Okay. Are you familiar that local news
11:16:50 15 agencies have been submitting FOIL requests to the
11:16:52 16 City of Buffalo Police Department to release
11:16:54 17 records of officer discipline relating to
11:16:57 18 individual officers?

11:16:58 19 A. Yes.

11:17:00 20 Q. All right. Have you reviewed any of
11:17:01 21 the records that have been released with respect to
11:17:03 22 individual officers?

11:17:04 23 A. No.

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11:17:05 1 Q. Okay. Getting back to IAD
11:17:10 2 investigations, are officers who are the subject of
11:17:15 3 misconduct complaints referred to in those
11:17:18 4 investigations as targets?

11:17:19 5 A. Yes.

11:17:20 6 Q. All right. And are targets expected to
11:17:23 7 cooperate with IAD in the course of the
11:17:26 8 investigation?

11:17:27 9 A. Yes.

11:17:27 10 Q. Is there a penalty for failing to
11:17:31 11 cooperate fully with IAD?

11:17:33 12 A. Yes.

11:17:34 13 Q. Okay. And is that a penalty that you
11:17:35 14 as the chief disciplinarian within the Buffalo
11:17:40 15 Police Department would be one to decide on and
11:17:41 16 impose?

11:17:42 17 A. Yes.

11:17:42 18 Q. And I think I asked this earlier, but
11:17:50 19 the targets of the investigation are also expected
11:17:53 20 to be truthful with IAD, right?

11:17:56 21 A. Yes.

11:17:56 22 Q. And truthful in everything they do?

11:17:59 23 A. Yes.

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11:17:59 1 Q. Okay. I want to ask you some
11:18:06 2 questions, Mr. Lockwood, about specific
11:18:14 3 requirements within the police manual.

11:18:18 4 What do you actually refer to the manual of
11:18:21 5 operations as, what's its official name to you as
11:18:23 6 the police commissioner?

11:18:24 7 A. The MOP.

11:18:27 8 Q. MOP. Manual of operations?

11:18:29 9 A. Yep.

11:18:30 10 Q. Okay. Mine doesn't have a cover page.
11:18:33 11 So -- and is that shorthand that's used within the
11:18:41 12 department to refer to the rules and regulations
11:18:45 13 that govern police officers?

11:18:47 14 A. Yes.

11:18:47 15 Q. All right. And the version that I have
11:18:52 16 says revised February 17, 2017. Do you know if
11:18:56 17 that was the last revision to the -- to the manual,
11:19:02 18 is that the current version?

11:19:04 19 A. I think there's been some other
11:19:07 20 additions to the manual of procedure.

11:19:10 21 Q. Okay. And do you know if prior to
11:19:15 22 February 17 of 2017, was the MOP substantially
11:19:20 23 different?

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11:19:23 1 **MS. HUGGINS:** Form.

11:19:24 2 **THE WITNESS:** Can you repeat that?

11:19:25 3 **BY MR. RUPP:**

11:19:25 4 **Q.** Do you know if was -- was there a major
11:19:28 5 change in February of 2017 or is the manual just
11:19:31 6 constantly being updated?

11:19:33 7 **A.** I think it's just being updated. I
11:19:39 8 don't think it was a -- no real major change.

11:19:42 9 **Q.** All right. I want to ask you some --
11:19:44 10 some questions about you said at one point you
11:19:46 11 served as a patrol officer; is that right?

11:19:48 12 **A.** Yes.

11:19:48 13 **Q.** You drove a city-owned vehicle that was
11:19:52 14 assigned to the Buffalo Police Department; is that
11:19:55 15 right?

11:19:55 16 **A.** Yes.

11:19:55 17 **Q.** And you had to be -- among other
11:20:01 18 things, you had to be a licensed driver to operate
11:20:01 19 that, right?

11:20:01 20 **A.** Yes.

11:20:01 21 **Q.** And I think we had a brief conversation
11:20:04 22 about accidents that police vehicles might be
11:20:09 23 involved in. They -- they are involved in

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11:20:11 1 accidents from time to time; is that right?

11:20:13 2 **A.** Yes.

11:20:13 3 **Q.** All right. And is there a procedure or
11:20:17 4 protocol in the MOP relating to what happens when a
11:20:24 5 patrol officer's city-owned vehicle is involved in
11:20:26 6 an accident?

11:20:27 7 Whether it's personal injury or property
11:20:28 8 damage or even if there's no apparent injuries or
11:20:31 9 damage at all, but there's been an accident, is
11:20:34 10 there a procedure that's followed?

11:20:35 11 **A.** Yes.

11:20:35 12 **Q.** And can you tell us what is that
11:20:38 13 procedure?

11:20:38 14 **A.** You notify radio which is the 911
11:20:45 15 dispatch and you notify your supervisor. Then
11:20:56 16 radio would notify accident investigating unit
11:21:14 17 and -- and internal affairs would be notified and
11:21:28 18 then an accident -- they would make an accident
11:21:28 19 report.

11:21:28 20 **Q.** I mean, are there any other exceptions
11:21:31 21 to that, Mr. Lockwood, where a police vehicle would
11:21:34 22 be involved in an accident where that wouldn't be
11:21:36 23 required by the MOP to be followed, that procedure?

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11:21:39 1 A. No.

11:21:45 2 Q. And so let's go through again what you
11:21:45 3 told us. You -- you said that the first thing
11:21:47 4 would happen is the patrol officers who were
11:21:50 5 involved in the accident or saw it would notify
11:21:54 6 dispatch; is that right?

11:21:55 7 A. Yes.

11:21:55 8 Q. And then dispatch would know to notify
11:21:57 9 the supervisor at the district; is that right?

11:21:59 10 A. Yes.

11:21:59 11 Q. And I think we previously established
11:22:02 12 that that would be either a lieutenant or perhaps a
11:22:04 13 captain, correct?

11:22:05 14 A. Correct.

11:22:06 15 Q. All right. Is there any requirement
11:22:07 16 that that individual supervisor go to the scene?

11:22:12 17 A. Yes.

11:22:13 18 Q. All right. Is that something that's
11:22:15 19 optional or is that something that's required?

11:22:18 20 A. We would -- he would go to the scene,
11:22:22 21 but if the lieutenant is out on a -- if there's
11:22:26 22 something that he's out on, sometimes there's
11:22:30 23 something else going on in the district --

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11:22:32 1 Q. Of course.

11:22:32 2 A. -- which can -- and he can be tied up
11:22:34 3 on, then he wouldn't necessarily would go there,
11:22:38 4 but the other units would be there. An accident
11:22:42 5 investigating unit would report and internal
11:22:44 6 affairs would be there.

11:22:46 7 Q. All right. So --

11:22:47 8 A. But I'm quite sure as soon as a
11:22:48 9 lieutenant can free himself up, he would get there
11:22:51 10 or she.

11:22:52 11 Q. All right. So that's a requirement of
11:22:54 12 the MOP --

11:22:54 13 A. Yeah.

11:22:55 14 Q. -- that the lieutenant or captain or
11:22:57 15 supervision at the district if they are available
11:23:00 16 would go to the scene of the accident; is that
11:23:02 17 right?

11:23:02 18 A. Yes.

11:23:03 19 Q. Okay. And even if they're tied up in
11:23:07 20 the moment on something more important, when they
11:23:11 21 free up, they should go to the scene; is that
11:23:13 22 right?

11:23:13 23 A. Yes.

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11:23:14 1 Q. All right. And next thing you said was
11:23:16 2 that the Accident Investigation Unit would be
11:23:18 3 notified. What is the Accident Investigation Unit?

11:23:21 4 A. That's -- Accident Investigate Unit is
11:23:26 5 the -- it's our unit that any time there's a police
11:23:29 6 vehicle or city involved vehicle accident, they
11:23:32 7 report and they make -- make out the accident
11:23:36 8 report and --

11:23:39 9 Q. And is that -- is that procedure
11:23:40 10 spelled out in the MOP for the Buffalo Police
11:23:44 11 Department or is that a citywide thing for all
11:23:46 12 city-owned vehicles including police vehicles?

11:23:49 13 A. I know it's -- in our manual of
11:23:52 14 procedures for us now citywide, fire, we would
11:23:57 15 respond to fire too, their accidents.

11:24:00 16 Q. AIU would respond to a fire truck
11:24:03 17 that's involved in an accident?

11:24:05 18 A. Yes.

11:24:05 19 Q. Okay. And is there ever any exceptions
11:24:09 20 to that? If a police vehicle's involved in an
11:24:12 21 accident, AIU's going to be summoned and they're
11:24:15 22 going to go to the scene as far as the MOP is
11:24:18 23 concerned; is that right?

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11:24:18 1 **MS. HUGGINS:** Form. You can answer.

11:24:20 2 **BY MR. RUPP:**

11:24:21 3 **Q.** Strike it.

11:24:22 4 Are there any exceptions to that, that AIU
11:24:25 5 would be involved and go to the scene?

11:24:27 6 **A.** I'm trying to -- AIU doesn't go to all
11:24:46 7 the accident scenes. If it's something that is
11:24:49 8 very serious injuries or officers injured, they
11:24:54 9 would respond to that.

11:24:55 10 But if it's, you know, officer backed into a
11:25:00 11 pole and just dented the fender bender, AIU
11:25:06 12 wouldn't -- they would report that -- the
11:25:07 13 lieutenant will report that, but it would be more
11:25:10 14 of internal affairs would go out there and internal
11:25:17 15 affairs would go there and the lieutenants and they
11:25:20 16 would make the report.

11:25:21 17 **Q.** All right. So the -- if -- if an
11:25:22 18 officer, let's go with your example, backs into a
11:25:26 19 pole, nobody's injured, minor damage to the -- to
11:25:28 20 the bumper of the SUV or whatever the patrol
11:25:30 21 officer's driving. Is there -- is there still a
11:25:34 22 requirement to report that to dispatch?

11:25:36 23 **A.** Yes.

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11:25:37 1 Q. All right. There's no exceptions to
11:25:40 2 that; is that right?

11:25:40 3 A. No.

11:25:41 4 Q. Okay. So even if it's small and
11:25:43 5 trivial and doesn't look like it's much damage at
11:25:46 6 all or any damage, it's still got to be reported
11:25:48 7 that it happened; is that right?

11:25:50 8 A. Yes.

11:25:50 9 Q. Okay. So then the lieutenant would
11:25:52 10 still be required to go if the lieutenant is
11:25:55 11 available, correct?

11:25:56 12 A. Yes.

11:25:56 13 Q. All right. There's no exceptions to
11:25:58 14 that either?

11:25:59 15 A. Right.

11:25:59 16 Q. Then AI -- AIU, the Accident
11:26:03 17 Investigation Unit, also would be notified, but
11:26:05 18 they may not go if it's insignificant?

11:26:09 19 A. Correct.

11:26:09 20 Q. All right. And then the final step of
11:26:12 21 the process was the IAD, Internal Affairs Division,
11:26:17 22 would be notified and they would go; is that
11:26:19 23 correct?

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11:26:19 1 A. Yes.

11:26:19 2 Q. Would there be any exceptions to them
11:26:22 3 going?

11:26:22 4 A. No.

11:26:22 5 Q. All right. So of the three different
11:26:28 6 folks who would go to the scene, the lieutenant,
11:26:31 7 AIU, or IAD, two of them are going to go even for
11:26:37 8 insignificant or trivial accidents; is that right?

11:26:40 9 A. Yes.

11:26:40 10 Q. And that would be in keeping with the
11:26:42 11 MOP?

11:26:42 12 A. Yes.

11:26:44 13 Q. All right. And once the lieutenant
11:26:51 14 goes to the scene, is the lieutenant required to
11:26:54 15 fill out any paperwork relating to the accident
11:26:56 16 that happened on that lieutenant's shift or
11:26:59 17 platoon?

11:26:59 18 A. He would put it in his report.

11:27:02 19 Q. For the day --

11:27:03 20 A. Yes.

11:27:03 21 Q. -- or for the -- for the shift?

11:27:04 22 A. Yes.

11:27:04 23 Q. Is that what it's called? I know you

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11:27:06 1 said that the shifts are manned by platoons, but in
11:27:11 2 the parlance of the police department, is it called
11:27:13 3 a shift?

11:27:14 4 A. Platoons were back in the precinct --

11:27:18 5 Q. Ah.

11:27:19 6 A. -- phase.

7 Q. So --

11:27:19 8 A. Now it's more of a -- more shift

11:27:21 9 because it's more of a straight shift, standard
11:27:25 10 shifts.

11:27:25 11 Q. Got it.

11:27:26 12 A. Instead of doubling back.

11:27:28 13 Q. So the lieutenant's assigned to a
11:27:30 14 shift?

11:27:30 15 A. Right.

11:27:30 16 Q. And as a lieutenant, does he or she do
11:27:33 17 a report at the end of the shift?

11:27:34 18 A. Yes.

11:27:34 19 Q. All right. And so if there is an
11:27:37 20 accident, even if there's nothing but a scratch,
11:27:39 21 it's trivial, lieutenant goes out, puts that in the
11:27:42 22 report for that shift?

11:27:43 23 A. Yes.

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11:27:43 1 Q. And that follows the MOP?

11:27:45 2 A. Yes.

11:27:45 3 Q. All right. AIU may or may not go out.

11:27:49 4 Let's assume they go out. Does AIU do a report

11:27:52 5 every time they go out?

11:27:53 6 A. Yes.

11:27:53 7 Q. And that involves paperwork?

11:27:55 8 A. It would involve the accident. They

11:27:58 9 would, yeah, do paperwork. They would -- if it's a

11:28:02 10 very serious accident, you know, they would measure

11:28:07 11 and do what they do. Wrote -- wrote things off and

11:28:12 12 take -- they would take statements too.

11:28:15 13 Q. Now, is I -- is AIU under the authority

11:28:19 14 of the police department or is that like a -- a

11:28:20 15 city entity that also investigates police

11:28:27 16 department accidents?

11:28:27 17 A. They're under the authority of the

11:28:30 18 Buffalo Police Department.

11:28:31 19 Q. They are?

11:28:31 20 A. Yes.

11:28:31 21 Q. Okay. So they -- so you supervise the

11:28:36 22 Accident Investigation Unit for the entire city for

11:28:39 23 all city-owned vehicles?

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11:28:42 1 A. I supervise Buffalo Police vehicles.

11:28:49 2 Not all city vehicles.

11:28:50 3 Q. Well, that was my question. Is A -- is
11:28:53 4 AIU, is it divided up where there's a part of the
11:28:56 5 AIU that's with the police department and then
11:28:59 6 there's a part that's with the fire department?

11:29:00 7 A. No.

11:29:01 8 Q. So there's one AIU?

11:29:02 9 A. There's one AIU stationed out of
11:29:05 10 headquarters and that's up under the Buffalo Police
11:29:07 11 Department.

11:29:07 12 Q. That's what I'm getting at. So -- so
11:29:09 13 and ultimately you are the chain of command to the
11:29:12 14 highest level of the city police department, right?

11:29:15 15 A. Yes.

11:29:16 16 Q. So ultimately AIU falls under your
11:29:18 17 supervision, right?

11:29:19 18 A. Yes.

11:29:19 19 Q. And that includes not only police
11:29:21 20 vehicles, but also fire trucks and other city-owned
11:29:26 21 vehicles; is that right?

11:29:27 22 A. The fire department has their
11:29:30 23 commissioner and he will -- he's over their

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11:29:34 1 vehicle. We will investigate the accident.

11:29:38 2 Q. Okay.

11:29:38 3 A. The police just investigate the
11:29:39 4 accidents.

11:29:40 5 Q. All right. But the AIU investigators
11:29:44 6 are employed by the City of Buffalo Police
11:29:48 7 Department?

11:29:48 8 A. Yes.

11:29:48 9 Q. Okay. That's what I'm getting at.
11:29:50 10 So -- so they ultimately -- you're not as police
11:29:53 11 commissioner going to be as concerned if a
11:29:55 12 city-owned vehicle that's not a police vehicle is
11:29:58 13 involved in an accident.

11:29:59 14 That's going to involve paperwork for the
11:30:01 15 fire department and things like that, but -- but
11:30:03 16 those investigators are under your command?

11:30:05 17 A. Yes.

11:30:05 18 Q. Got it. Okay. And internal affairs,
11:30:11 19 if they go out, there's going to be paperwork
11:30:14 20 generated on the accident; is that right?

11:30:15 21 A. Yes.

11:30:16 22 Q. All right. Even if it's just a scratch
11:30:18 23 on the fender?

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11:30:18 1 A. Yes.

11:30:19 2 Q. Even if there's no damage at all?

11:30:21 3 A. If they're called out, yes, there's

11:30:24 4 going to be paperwork done.

11:30:25 5 Q. All right. If they're called out

11:30:25 6 there's paperwork and that's true of the

11:30:27 7 lieutenant, it's true of AIU, and it's true of IAD?

11:30:30 8 A. Yes.

11:30:30 9 Q. Okay. All for something that can be --

11:30:35 10 leave no damage to the patrol vehicle and no

11:30:38 11 injuries to anyone --

11:30:39 12 MS. HUGGINS: Form.

11:30:40 13 BY MR. RUPP:

11:30:40 14 Q. -- is that right?

11:30:42 15 A. Can you say it again.

11:30:44 16 Q. All of that paperwork happens --

17 A. Right.

11:30:46 18 Q. -- even if there's no damage to the

11:30:48 19 patrol vehicle and no injuries. As long as the

11:30:52 20 incident has been radioed into dispatch, if those

11:30:55 21 people go to the scene, they're generating

11:30:58 22 paperwork?

11:30:58 23 A. Yes.

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11:30:58 1 Q. No exceptions?

11:31:01 2 A. There should be paperwork.

11:31:02 3 Q. Okay. And if you found instances of
11:31:07 4 that not happening, Mr. Lockwood, would you make --
11:31:13 5 take the right corrective steps to make sure that
11:31:15 6 people are going to the scene and paperwork is
11:31:17 7 being filled out in compliance with the MOP?

11:31:21 8 A. Yes.

11:31:23 9 Q. All right. So, for example, if you
11:31:25 10 found that AIU was not going out for police patrol
11:31:32 11 vehicles involved in accidents or if they went out,
11:31:35 12 they weren't filing paperwork, you would have
11:31:37 13 something to say about that; is that right?

11:31:39 14 A. Yes.

11:31:39 15 Q. And you would take corrective measures?

11:31:41 16 A. Yes.

11:31:41 17 Q. Now, in an instance where someone were
11:31:52 18 to damage a police vehicle, a police vehicle say is
11:31:57 19 stationary or parked, but somebody damages it,
11:32:00 20 would any of those procedures be followed or would
11:32:03 21 there be a different procedure?

11:32:05 22 A. If the vehicle was parked and someone
11:32:14 23 damaged the vehicle?

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11:32:14 1 Q. Yeah. Let's say the patrol officers
11:32:16 2 report to a call, they get out of the vehicle, and
11:32:19 3 a citizen for some reason or another attacks the
11:32:21 4 patrol vehicle and damages it. What procedure
11:32:23 5 would be followed in that instance?

11:32:27 6 A. Well, they would notify -- the officer
11:32:30 7 would -- if they know who did it, then they would
11:32:35 8 probably investigate it and find out why and -- and
11:32:39 9 if -- then they would make, you know, an arrest.

11:32:43 10 Q. Right. But what would happen in terms
11:32:45 11 of reporting, would that be required to be reported
11:32:47 12 to radio dispatch?

11:32:49 13 A. Yes. You would call -- you would call
11:32:51 14 that in that you making -- you know, making an
11:32:53 15 arrest and --

11:32:54 16 Q. Sure. You would call that in any time
11:32:56 17 you're making an arrest, right?

11:32:58 18 A. Right.

11:32:58 19 Q. But with respect to the -- the
11:32:59 20 involvement of the vehicle and the damage to the
11:33:02 21 vehicle, would the lieutenant go at that point as
11:33:05 22 in a situation where the vehicle itself was
11:33:08 23 involved in the accident with an officer at the

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11:33:11 1 wheel?

11:33:11 2 **MS. HUGGINS:** Form. You can answer.

11:33:17 3 **BY MR. RUPP:**

11:33:17 4 **Q.** Well, strike it.

11:33:17 5 What is the procedure? I know an arrest
11:33:17 6 gets reported to dispatch no matter what type of an
11:33:20 7 arrest it is.

11:33:21 8 I want to talk about a situation where a
11:33:23 9 citizen damages, vandalizes, whatever you want to
11:33:27 10 call it, a police SUV right in front of the
11:33:29 11 officers.

11:33:29 12 Person's arrested right there, dispatch is
11:33:32 13 notified of the arrest. What else happens, if
11:33:36 14 anything, under the MOP to document the damage to
11:33:39 15 the vehicle?

11:33:39 16 **A.** If it's -- if it's a lot of damage to
11:33:47 17 the vehicle, then they can always call in evidence
11:33:53 18 to -- photographer to take pictures of the vehicle.

11:33:57 19 **Q.** What's a lot of damage?

11:33:59 20 **A.** If, you know, the windows are busted
11:34:01 21 out and --

11:34:03 22 **Q.** What about a mirror busted off?

11:34:05 23 **A.** A mirror busted?

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11:34:07 1 Q. Yeah, a side-view mirror that's busted
11:34:10 2 and hanging broken from its mooring.

11:34:14 3 MS. HUGGINS: Form.

11:34:15 4 THE WITNESS: Use discretion if you want to
11:34:21 5 call, get pictures taken.

11:34:22 6 BY MR. RUPP:

11:34:22 7 Q. Was there a dollar cutoff that you
11:34:24 8 would use if the vehicle is in the officer's
11:34:26 9 estimation sustained more than X amount of dollars
11:34:29 10 you'd call in evidence to take those photographs?

11:34:32 11 MS. HUGGINS: Form.

11:34:32 12 THE WITNESS: Repeat that.

11:34:38 13 BY MR. RUPP:

11:34:38 14 Q. Is there a cutoff in terms of dollars
11:34:41 15 for the damage to the vehicle that would demarcate
11:34:45 16 the point between you're not going to call out the
11:34:48 17 evidence team and you are going to call out the
11:34:50 18 evidence team?

11:34:51 19 MS. HUGGINS: Form.

11:34:51 20 THE WITNESS: I don't think there's a --
11:34:58 21 yeah, if it's a dollar amount. Yes.

11:35:00 22 BY MR. RUPP:

11:35:00 23 Q. All right. Well, let me ask you this,

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11:35:02 1 Mr. Lockwood. As -- are you familiar with a charge
11:35:06 2 that would be brought for somebody who damages a
11:35:09 3 police vehicle?

11:35:11 4 Whether that would be a misdemeanor or a
11:35:13 5 felony, do you -- going back to your patrol officer
11:35:16 6 days or your detective days, what would the charge
11:35:19 7 be?

11:35:20 8 A. It would be a criminal mischief.

11:35:22 9 Q. All right. And are there degrees of
11:35:24 10 criminal mischief depending on the amount of damage
11:35:27 11 caused?

11:35:27 12 A. Yes.

11:35:27 13 Q. And do you know what the dollar
11:35:29 14 threshold cutoff is for different degrees of
11:35:32 15 criminal mischief?

11:35:34 16 A. I think back in -- back when I was in
11:35:40 17 patrol, I think it used to be like 1,500. I'm not
11:35:42 18 sure if it changed now.

11:35:43 19 Q. Does \$250 ring a bell in terms of
11:35:47 20 damage below \$250 being one category of criminal
11:35:51 21 mischief and damage above \$250 being in another
11:35:56 22 category of criminal mischief?

11:35:57 23 A. 200 -- below \$250, that's a

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11:35:59 1 misdemeanor.

11:36:00 2 Q. All right. And above \$250 it's what?

11:36:03 3 A. Probably would be a felony.

11:36:10 4 Q. And if a felony damage has occurred to

11:36:13 5 a City of Buffalo police vehicle by criminal

11:36:23 6 mischief, would you expect that the evidence team

11:36:23 7 would be brought out to document that?

11:36:23 8 MS. HUGGINS: Form.

11:36:24 9 THE WITNESS: No.

11:36:25 10 BY MR. RUPP:

11:36:26 11 Q. Why not?

11:36:27 12 A. If it's -- I'm quite sure if it's just

11:36:33 13 a mirror hanging off or if it's just \$250, I mean

11:36:38 14 it can just be -- it wasn't a massive lot of

11:36:44 15 damage, I don't think it would --

11:36:44 16 Q. What about a broken --

11:36:45 17 MS. HUGGINS: Well --

11:36:46 18 MR. RUPP: Go ahead.

11:36:47 19 MS. HUGGINS: Do you want him to finish his

11:36:49 20 answer?

11:36:49 21 MR. RUPP: Sure. I thought he was.

11:36:50 22 THE WITNESS: I don't think it was a -- a --

11:36:53 23 you know, not a massive lot of damage. If it was

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11:36:58 1 just, you know, a small amount, I don't think we
11:37:03 2 will call evidence and -- I mean a photographer to
11:37:07 3 amount for that.

11:37:07 4 **BY MR. RUPP:**

11:37:08 5 **Q.** What if the mirror's broken, the
11:37:10 6 driver's side window won't go up and down anymore,
11:37:13 7 would that be enough damage to bring out the
11:37:15 8 evidence team?

11:37:15 9 **MS. HUGGINS:** Form.

11:37:16 10 **THE WITNESS:** No.

11:37:25 11 **BY MR. RUPP:**

11:37:25 12 **Q.** All right. So would -- we were talking
11:37:30 13 about the evidence team. Would -- would the
11:37:32 14 lieutenant be brought out to the scene when there's
11:37:35 15 been felony level damage committed to a police
11:37:38 16 vehicle by criminal mischief?

11:37:39 17 **MS. HUGGINS:** Form.

11:37:46 18 **BY MR. RUPP:**

11:37:46 19 **Q.** Strike it.

11:37:46 20 Is there -- is there a procedure in the MOP
11:37:46 21 that requires the lieutenant to go out when there's
11:37:49 22 felony level damage to a police vehicle?

11:37:52 23 **A.** You would -- it would be recommended

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11:37:57 1 that you call the lieutenant and notify the
11:37:59 2 lieutenant.

11:38:00 3 Q. All right. Would the lieutenant go to
11:38:02 4 the scene then and see the damage to the vehicle?

11:38:04 5 MS. HUGGINS: Form.

11:38:05 6 BY MR. RUPP:

11:38:06 7 Q. Do you know if the manual requires the
11:38:07 8 lieutenant to go to the scene when that
11:38:09 9 notification is made?

11:38:10 10 A. Yes, he would go to the scene.

11:38:12 11 Q. Okay. And what about the Accident
11:38:17 12 Investigation Unit, would they be dispatched at all
11:38:21 13 in a case of criminal mischief, felony level
11:38:25 14 criminal mischief caused to a police vehicle?

11:38:26 15 A. No.

11:38:27 16 Q. Okay. And what about the Internal
11:38:31 17 Affairs Division, would that be dispatched?

11:38:32 18 A. No.

11:38:32 19 Q. All right. So why is there a
11:38:39 20 difference, Mr. Lockwood, between damage caused to
11:38:45 21 a police vehicle when it's being operated and the
11:38:51 22 type of damage which we were discuss -- we were
11:38:54 23 just discussing that's caused by criminal mischief

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11:38:57 1 in terms of the procedures and who goes to the
11:38:59 2 scene?

11:38:59 3 **A.** Well, what the criminal mischief is,
11:39:02 4 I'm assuming that there's no one in the vehicle and
11:39:05 5 it was just -- it was damaged and the person -- you
11:39:08 6 saw the person damage the car.

11:39:11 7 So we would -- we wouldn't need Accident
11:39:14 8 Investigating Unit because it wasn't an accident.
11:39:17 9 It was more of an intent, you know, to damage the
11:39:19 10 vehicle.

11:39:21 11 As far as someone being in the vehicle, you
11:39:26 12 know, you're driving and it can either be an
11:39:28 13 accident which is an accident you can hit something
11:39:31 14 and that would calls for one of those -- you know,
11:39:39 15 like I said, it all depends on if it's major damage
11:39:43 16 or if it's just minor.

11:39:45 17 It calls for your lieutenant to be notified
11:39:47 18 and the other units, it depends on if it's major or
11:39:54 19 minor. Well, internal affairs would definitely
11:39:57 20 come out if it's a driving incident.

11:39:59 21 **Q.** Any time it's a driving incident,
11:40:01 22 internal affairs is supposed to come out?

11:40:02 23 **A.** Yes.

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11:40:03 1 Q. All right. And that's true even if
11:40:06 2 while it's being driven, somebody attacks the SUV
11:40:10 3 or attacks the patrol vehicle, right?

11:40:11 4 MS. HUGGINS: Form. You can answer.

11:40:12 5 THE WITNESS: What -- what do you mean?

11:40:15 6 BY MR. RUPP:

11:40:15 7 Q. Let's say -- let's say we've got a
11:40:16 8 situation where the vehicle is being operated --

9 A. Right.

11:40:18 10 Q. -- it's in motion, there's an officer
11:40:20 11 behind the wheel, it's being driven --

12 A. Okay.

11:40:22 13 Q. -- and somebody attacks it at that
11:40:24 14 point. Would that be -- would that trigger the MOP
11:40:27 15 procedures of radioing dispatch, bringing the
11:40:31 16 lieutenant, the Accident Investigation Unit, and
11:40:34 17 IAD to the scene?

11:40:34 18 A. When you say attacked, are you saying
11:40:37 19 attacked by -- attacking the vehicle with a weapon
11:40:41 20 or -- I don't know what you mean by attacked.

11:40:43 21 Q. Let's say the person throws themselves
11:40:46 22 into the police vehicle while it's being operated.

11:40:49 23 A. Well, that would call for internal

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11:40:52 1 affairs, that would call for Accident Investigating
11:40:54 2 Unit, and it would -- calls for a lieutenant to be
11:40:56 3 there.

11:40:56 4 Q. Even if the person was perhaps
11:40:59 5 suicidal, threw himself at the side of the vehicle
11:41:02 6 or in front of it trying to kill themselves, that
11:41:05 7 would still, if the vehicle's in motion, it's being
11:41:07 8 operated by a police officer, require those things
11:41:10 9 to happen, those people to go to the scene?

11:41:12 10 MS. HUGGINS: Form.

11:41:13 11 THE WITNESS: Yes.

11:41:13 12 BY MR. RUPP:

11:41:13 13 Q. Okay. Let me ask it again since there
11:41:15 14 was a form objection. Even if the person throws
11:41:18 15 themselves at the vehicle to cause themselves harm
11:41:21 16 or damage to the vehicle, if it's being operated
11:41:23 17 and it's in motion, the lieutenant, AIU, and IAD
11:41:28 18 would be dispatched to that scene; is that correct?

11:41:30 19 A. Yes.

11:41:31 20 Q. And there would be no exceptions to
11:41:34 21 that, would there?

11:41:35 22 A. No.

11:41:35 23 Q. And if you came across an instance

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11:41:37 1 where that didn't happen, that would invoke your
11:41:40 2 responsibilities as the chief disciplinarian of the
11:41:44 3 City of Buffalo Police Department, right? Where
11:41:46 4 you would take corrective measures to make sure
11:41:49 5 that happened every time?

11:41:50 6 **A.** Yes.

11:41:52 7 **Q.** And there wouldn't be any exceptions to
11:41:55 8 that for you, would there be?

11:41:56 9 **A.** What do you mean?

11:41:56 10 **Q.** You would never say well, in that
11:42:00 11 instance you didn't have to call the lieutenant or
11:42:04 12 IAD or AIU, I'm okay with it, you would never say
11:42:07 13 that?

11:42:07 14 **MS. HUGGINS:** Form.

11:42:09 15 **BY MR. RUPP:**

11:42:10 16 **Q.** So let me go back to my example,
11:42:12 17 Mr. Lockwood, because there's a form objection
11:42:14 18 again.

11:42:14 19 If there's an instance where the police
11:42:17 20 vehicle has an officer behind the wheel and it's
11:42:20 21 being operated and it's in motion when a citizen
11:42:22 22 throws themselves at the vehicle for whatever
11:42:24 23 reason or not, there would never be an instance

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11:42:27 1 where you would think as commissioner of the police
11:42:29 2 department, it would be okay that the lieutenant,
11:42:32 3 AIU, and IAD were not dispatched to the scene of
11:42:36 4 that incident?

11:42:42 5 **MS. HUGGINS:** Form.

11:42:44 6 **BY MR. RUPP:**

11:42:45 7 **Q.** Strike it.

11:42:46 8 Mr. Lockwood, do you understand my question?

11:42:47 9 **A.** I understand. I understand your
11:42:50 10 question.

11:42:50 11 **Q.** My question is would there ever be a
11:42:53 12 reason why you think that those individuals, the
11:42:56 13 lieutenant at the district, the Accident
11:43:00 14 Investigation Unit, and the IAD would not -- where
11:43:03 15 it would be okay that they were not notified and
11:43:07 16 not called to the scene when the incident that I
11:43:09 17 just described happened?

11:43:11 18 **A.** If -- if the person threw themselves at
11:43:18 19 the -- you know, at the -- on the vehicle or --
11:43:27 20 lieutenant should have -- at least lieutenant
11:43:29 21 should have been called.

11:43:30 22 **Q.** All right.

11:43:30 23 **A.** I don't -- I'm looking at -- I don't

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11:43:33 1 know what -- you know, what kind of injuries or
11:43:35 2 what, you know, may have came out of this, but a
11:43:40 3 lieutenant should be called.

11:43:41 4 And then from there they should determine if
11:43:44 5 they need Accident Investigating Unit, internal --
11:43:51 6 internal affairs. From there, the supervisor
11:43:52 7 should -- should be notified about that.

11:43:56 8 Q. And one of the reasons for that would
11:43:59 9 be that -- protect the city against liability,
11:44:02 10 right?

11:44:03 11 A. Yes.

11:44:05 12 Q. All right. I mean, in your role as
11:44:06 13 police commissioner, I mean, you're certainly aware
11:44:09 14 that what happens in your department can result in
11:44:12 15 lawsuits and liability judgments against the City
11:44:14 16 of Buffalo, right?

11:44:15 17 A. Yes.

11:44:15 18 Q. I mean, there have been some fairly
11:44:17 19 high profile recent settlements involving police
11:44:21 20 shootings and multimillion dollar settlements with
11:44:24 21 the City of Buffalo, right?

11:44:25 22 A. Yes.

11:44:25 23 Q. There was a shooting recently and it

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11:44:29 1 settled for four and a half million dollars with an
11:44:33 2 Officer Schultz; is that right?

11:44:34 3 **A.** Yes.

11:44:34 4 **Q.** And that money comes right out of the
11:44:37 5 city's budget because the city police department is
11:44:41 6 a division of the City of Buffalo, right?

11:44:43 7 **MS. HUGGINS:** Form.

11:44:45 8 **THE WITNESS:** Can you repeat that?

11:44:46 9 **BY MR. RUPP:**

11:44:47 10 **Q.** That money's paid by the City of
11:44:49 11 Buffalo, correct, because the city police
11:44:51 12 department is a division of the City of Buffalo,
11:44:52 13 right?

11:44:52 14 **A.** Yes.

11:44:52 15 **Q.** And you're familiar with that as police
11:44:54 16 commissioner, right?

11:44:55 17 **A.** Yes.

11:44:55 18 **Q.** And do you have discussions with
11:44:57 19 Mayor Brown about those types of judgments and
11:45:00 20 verdicts and settlements that cost the city that
11:45:03 21 kind of money?

11:45:04 22 **A.** No.

11:45:05 23 **Q.** You never talk about that with him?

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11:45:08 1 A. Since I've been commissioner, no.

11:45:10 2 Q. All right. Do you believe it's part of
11:45:15 3 your role to try to keep liability for the police
11:45:16 4 department and judgments and verdicts and
11:45:18 5 settlements as low as you can to protect the
11:45:21 6 taxpayers of the city?

11:45:22 7 A. Yes.

11:45:23 8 Q. Okay. And that would mean avoiding
11:45:26 9 negligence and police misconduct and things that
11:45:30 10 lead to those types of results against the city
11:45:33 11 right?

11:45:34 12 A. Yes.

11:45:34 13 Q. And you as the police commissioner can
11:45:35 14 play a role in trying at least to minimize those
11:45:44 15 types of exposures to the city's budget, right?

11:45:45 16 A. Yes.

11:45:46 17 Q. Okay. And that would be something that
11:45:47 18 you would take seriously in your responsibilities
11:45:49 19 as police commissioner, right?

11:45:50 20 A. Yes.

11:45:50 21 Q. All right. So if a police SUV in
11:45:53 22 motion being operated being driven strikes a
11:45:58 23 pedestrian or is struck by a pedestrian, you would

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11:46:00 1 expect that the MOP procedures would be followed in
11:46:03 2 that instance, right?

11:46:04 3 A. Yes.

11:46:05 4 Q. And that would include bringing the
11:46:07 5 lieutenant to the scene, the Accident Investigation
11:46:10 6 Unit, and IAD to make sure that that incident is
11:46:13 7 fully investigated and documented, right?

11:46:16 8 A. Yes, if it's -- if that's a major --
11:46:22 9 what I mean by major is, you know, life-threatening
11:46:26 10 accident. Someone hit and life-threatening, then
11:46:29 11 yes, we would have all -- all of them there.

11:46:31 12 Q. Well, is life-threatening the cutoff?
11:46:34 13 What -- what happens if somebody is in an accident
14 with a police SUV, a pedestrian breaks their leg,
11:46:39 15 is that significant enough to call out those people
11:46:39 16 under the MOP?

11:46:40 17 A. Yes.

11:46:40 18 Q. What happens if they break a toe?

11:46:43 19 A. Break a toe?

11:46:45 20 Q. Yeah. A police vehicle runs over their
11:46:48 21 foot, toe's broken?

11:46:50 22 A. Yes.

11:46:51 23 Q. All right. So it's not just serious

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11:46:53 1 injuries that's the cutoff, is it?

11:46:55 2 A. I said major.

11:46:56 3 Q. Okay. Well, I guess --

11:46:58 4 A. We consider -- we consider a toe break
11:47:00 5 major.

11:47:01 6 Q. Okay. So is any -- what -- what type
11:47:03 7 of injury involving a police SUV striking a
11:47:07 8 pedestrian would not be considered major?

11:47:11 9 A. I would say if a person was walking and
11:47:25 10 just -- and the police car stopped and didn't --
11:47:28 11 you know, really just tap or, you know, barely
11:47:33 12 touched the person, I don't think we need to call,
11:47:36 13 you know, AIU.

11:47:38 14 And -- and if the person -- you know, if
11:47:41 15 there's no -- you know, there's no injury there and
11:47:47 16 the -- and the individual said that I'm not -- you
11:47:49 17 know, you didn't really hit -- you didn't hit me
11:47:51 18 and I don't think it would need to be -- need to
11:47:54 19 call everyone out. But if the officer want to,
11:47:57 20 they have that option to.

11:47:58 21 Q. So what if the person says -- ends up
11:48:01 22 on the ground and says I'm injured, I want an
11:48:04 23 ambulance, would that be enough of a trigger to

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11:48:06 1 send out the lieutenant, the investigation unit,
11:48:09 2 and the IAD?

11:48:10 3 **A.** If the --

11:48:10 4 **MS. HUGGINS:** Form.

11:48:11 5 **THE WITNESS:** If the person says he's
11:48:13 6 injured, then it's up to the officers to get him
11:48:17 7 help.

11:48:17 8 **BY MR. RUPP:**

11:48:18 9 **Q.** All right. So -- but my question was
11:48:19 10 if the person says he's injured, would that result
11:48:22 11 under the MOP in the lieutenant and the IAD and the
11:48:26 12 AIU going to the scene?

11:48:28 13 **A.** Yes.

11:48:37 14 **Q.** Every instance?

11:48:38 15 **MS. HUGGINS:** Form.

11:48:39 16 **BY MR. RUPP:**

11:48:42 17 **Q.** Strike it.

11:48:51 18 Now, Mr. Lockwood, in the course of your
11:48:54 19 duties as the police commissioner, did you sit with
11:48:59 20 IAD in connection with the claims of my client,
11:49:02 21 Mr. Kistner, relating to police misconduct and
11:49:06 22 violations of police procedures?

11:49:08 23 **A.** Yes.

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11:49:08 1 Q. And when did you do that?

11:49:09 2 A. I believe that was in August.

11:49:15 3 Q. Of?

11:49:16 4 A. This year, 2020.

11:49:19 5 Q. And do you remember the date of the
11:49:23 6 incident involving Mr. Kistner?

11:49:25 7 A. New Years. New Years Day, 2017.

11:49:39 8 Q. Okay. So January 1st of 2017 was the
11:49:43 9 incident and you reviewed the results of the
11:49:51 10 Internal Affairs Division's investigation sometime
11:49:53 11 in August of 2020 over three and a half years
11:49:56 12 later; is that right?

11:49:58 13 A. Yes.

11:49:58 14 Q. Do you know why -- can you explain that
11:50:03 15 gap of time between the incident itself and your
11:50:05 16 review of the IAD investigation file?

11:50:07 17 A. I -- I did ask the investigator why
11:50:13 18 was -- you know, why was there the gap in there and
11:50:20 19 the investigator told me that they -- they didn't
11:50:23 20 know -- they didn't know nothing about this case
11:50:26 21 until it was -- corporate counsel -- what is the --
11:50:34 22 what -- I'm trying to think of the -- you notify
11:50:38 23 corporate counsel. The --

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11:50:39 1 Q. Notice of Claim?

11:50:40 2 A. Notice of Claim, yeah. Notice of Claim
11:50:44 3 came in, yeah.

11:50:45 4 Q. Do you know when the Notice of Claim
11:50:47 5 was filed --

11:50:47 6 A. I can't remember.

11:50:48 7 Q. -- Mr. Lockwood?

11:50:48 8 A. I can't remember that.

11:50:49 9 MR. RUPP: Let me ask Andrea if she would be
11:50:52 10 kind enough to mark this exhibit for us.

11 Maeve, this is going to be a little bit
12 awkward. I'll try to get it to you through the --

13 MS. HUGGINS: Thank you.

14 MR. RUPP: -- through the protective glass.

15 THE REPORTER: What would you like it marked
16 as?

17 MR. RUPP: Why don't we do Lockwood 1?

18 THE REPORTER: Sure.

19 MS. HUGGINS: I think we've been doing
20 consecutive and the last Exhibit was marked 38. So
21 this would be 39.

22 MR. RUPP: Is that true?

23 MR. DAVENPORT: That is.

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1 **MR. RUPP:** Okay. All right.

2 **THE REPORTER:** 39?

3 **MR. RUPP:** Let's do it 39 then.

4 **THE REPORTER:** Okay.

5 **MS. HUGGINS:** I don't want two competing
6 sets of numbers here.

7 **MR. RUPP:** I am fine with that if we've been
8 doing it.

9 **The following was marked for Identification:**

10 **EXH. 39** **Notice of Claim.**

11 **THE REPORTER:** Would you like me to hand it
12 to him?

13 **MR. RUPP:** If you would kindly.

14 **THE REPORTER:** Yes, not a problem.

11:51:45 15 Here you go.

11:51:45 16 **BY MR. RUPP:**

11:51:47 17 **Q.** All right. Mr. Lockwood, earlier I
11:51:49 18 asked you some questions about notices of claim and
11:51:52 19 you indicated that you were familiar with them,
11:51:53 20 right?

11:51:54 21 **A.** Mm-hmm.

11:51:54 22 **Q.** That's --

11:51:55 23 **MS. HUGGINS:** She just needs a --

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1 **THE WITNESS:** Oh.

11:51:56 2 **MS. HUGGINS:** -- verbal yes or no.

11:51:57 3 **THE WITNESS:** I'm sorry. I'm sorry.

11:51:58 4 **BY MR. RUPP:**

11:51:58 5 **Q.** That's okay, you're fine.

11:51:59 6 **A.** Yes.

11:51:59 7 **Q.** It happens to everyone. So let me just
11:52:03 8 ask you. I know you -- and I'll give you time to
11:52:05 9 read the whole thing if you want cover to cover.

11:52:08 10 But just from appearances, do you recognize
11:52:11 11 this by its title, if nothing else, and the caption
11:52:15 12 of a lawsuit at the top of the first page as a
11:52:17 13 Notice of Claim of the type that typically would be
11:52:20 14 used to commence a lawsuit against the City of
11:52:23 15 Buffalo?

11:52:23 16 **A.** Yes.

11:52:24 17 **Q.** All right. And if you'd like, you can
11:52:27 18 go ahead and take -- take your time to read it, but
11:52:33 19 do you see that there's a date stamp next to the
11:52:37 20 words Notice of Claim of March 31, 2017?

11:52:42 21 **A.** Yes.

11:52:43 22 **Q.** All right. And I'm going to represent
11:52:45 23 to you that that was the date that that Notice of

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11:52:50 1 Claim was filed to commence this proceeding under
11:53:00 2 the General Municipal Law in the Erie County
11:53:00 3 clerk's office. Okay?

11:53:00 4 **A.** Okay.

11:53:01 5 **Q.** Now, in looking at that and seeing that
11:53:05 6 this is a claim of James Kistner --

11:53:10 7 **MS. HUGGINS:** Tony, to be fair, I think it
11:53:11 8 was the -- the city clerk's office.

11:53:13 9 **BY MR. RUPP:**

11:53:14 10 **Q.** Okay. It may have been the city
11:53:16 11 clerk's office, but it was filed with a
11:53:19 12 governmental agency and served on the City of
11:53:21 13 Buffalo.

11:53:22 14 In looking at this, Mr. Lockwood, is that
11:53:26 15 consistent with what IAD told you, that they didn't
11:53:31 16 know anything about Mr. Kistner's claim until much
11:53:35 17 later when they actually performed their
11:53:37 18 investigation?

11:53:37 19 **A.** They told me that they opened up a case
11:53:49 20 because they had a Notice of Claim. They didn't
11:53:52 21 tell me when or I didn't, you know --

11:53:56 22 **Q.** Well, let's assume that's true,
11:53:58 23 Mr. Lockwood. If they opened an investigation file

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11:54:03 1 in connection with Mr. Kistner's complaints
11:54:05 2 sometime after March 31 of 2017, would you have
11:54:10 3 expected that it would take them three and a half
11:54:12 4 years to present you with the results of their
11:54:15 5 investigation as they did in August of 2020?

11:54:17 6 **MS. HUGGINS:** Form. You can answer.

11:54:21 7 **BY MR. RUPP:**

11:54:22 8 **Q.** Strike it.

11:54:22 9 Can you explain why if a file was opened at
11:54:26 10 IAD when the Notice of Claim was received, you
11:54:28 11 didn't sit down with the IAD investigator until
11:54:31 12 August of 2020?

11:54:32 13 **MS. HUGGINS:** Form.

11:54:33 14 **MR. RUPP:** What is the form objection to
11:54:35 15 that?

11:54:35 16 **MS. HUGGINS:** It's the assumption that a
11:54:36 17 filed was opened. He hasn't testified to that.

18 **BY MR. RUPP:**

11:54:39 19 **Q.** Well, he said that the IAD investigator
11:54:41 20 told him.

11:54:42 21 Isn't that what you told me, Mr. Lockwood,
11:54:44 22 that the IAD investigator told you that they didn't
11:54:46 23 know anything, didn't open a file until they got

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11:54:47 1 the Notice of Claim?

11:54:50 2 **A.** Yes, in August. See, I -- I sat down
11:54:52 3 with them in August.

11:54:54 4 **Q.** Right. But you asked them why such a
11:54:56 5 gap between -- I don't want to go back all through
11:54:58 6 this, but I will if I have to.

11:54:59 7 You told me that you knew that the incident
11:55:01 8 happened on January 1 of 2017 and you asked the IAD
11:55:05 9 investigator why it took until August of 2020 to
11:55:09 10 get the results of the investigation, correct?

11:55:11 11 **A.** Let me go back. The results and
11:55:17 12 investigation -- no, when we had the -- when they
11:55:19 13 brought it in front of me and they said this is a
11:55:24 14 case that happened in '17 and I want to know why
11:55:28 15 was there a gap, you know, in between '17 until
11:55:33 16 now, '20.

11:55:34 17 And they -- and they said well, we didn't
11:55:37 18 know nothing about it until we had a Notice of
11:55:40 19 Claim. Now, they didn't say when they got the
11:55:42 20 Notice of Claim. They just told me there was a
11:55:45 21 Notice of Claim and that's when they found out
11:55:47 22 about it.

11:55:47 23 **Q.** All right. But if that's true and the

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11:55:50 1 Notice of Claim was filed in the city clerk's
11:55:51 2 office on March 31st of 2017, can you explain the
11:55:55 3 gap?

11:55:55 4 **A.** No, I can't explain it. No.

11:56:00 5 **Q.** All right. Does that concern you,
11:56:01 6 Mr. Lockwood, that if what IAD told you was true,
11:56:05 7 that they learned about the allegations when the
11:56:07 8 Notice of Claim came in, does it concern you that
11:56:10 9 it took three and almost a half years before you
11:56:14 10 sat down with IAD to go over the results?

11:56:16 11 **A.** When the Notice of Claim was filed --
11:56:25 12 what I'm -- what I'm also looking at too is I
11:56:28 13 wasn't commissioner at that time.

11:56:30 14 So I just want to -- you know, I don't --
11:56:34 15 the Notice of Claim was filed in '17. I became the
11:56:39 16 commissioner in '18 and it came to me in '20.

11:56:45 17 So I just -- I did want to know well, why --
11:56:50 18 you know, this thing happened three years ago. Why
19 is I'm --

20 **Q.** Yeah. But my --

11:56:53 21 **A.** -- why are we just dealing with it.

11:56:55 22 **Q.** My question's slightly different and I
11:56:58 23 certainly know that this incident overlapped your

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11:57:01 1 transition from or ascension from first deputy
11:57:04 2 commissioner to the full police commissioner for
11:57:07 3 the whole city.

11:57:08 4 But as the commissioner in August of -- of
11:57:10 5 2020, if you had known that the Notice of Claim was
11:57:18 6 filed three and a half years earlier when IAD told
11:57:20 7 you that's when they learned about it, would you
11:57:24 8 have been concerned or are you concerned now that
11:57:25 9 it took three and a half years for the
11:57:28 10 commissioner, whoever it was, to sit down and
11:57:30 11 review the results of an investigation from an
11:57:32 12 incident that took place three and a half years
11:57:34 13 earlier?

11:57:35 14 **A.** There's some concerns, yes.

11:57:38 15 **Q.** I mean, there's -- there's got to be
11:57:39 16 some degree of timeliness with respect to IAD
11:57:44 17 investigations, right?

11:57:45 18 **A.** Yes.

11:57:45 19 **Q.** I mean, it doesn't help to have a
11:57:46 20 citizen complaint not resolved for three and a half
11:57:49 21 years, does it?

11:57:53 22 **MS. HUGGINS:** Form.

11:57:53 23 **BY MR. RUPP:**

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11:57:53 1 Q. Well, strike it.

11:57:54 2 I mean, does -- is three and a half years a
11:57:56 3 reasonable timeframe for IAD to investigate a
11:58:00 4 citizen complaint of police misconduct and present
11:58:02 5 the results to the commissioner?

11:58:04 6 A. What -- what the investigator was
11:58:13 7 telling me -- I mean, what I -- what I -- what I
11:58:16 8 understood him to be saying at that time when I
11:58:19 9 asked him why it took so long, he -- I was up under
11:58:22 10 the impression that they had just got this case
11:58:26 11 this year. You know, in other words --

11:58:30 12 Q. But he --

11:58:31 13 A. -- he said -- I didn't know when the
11:58:33 14 Notice of Claim was even filed.

11:58:35 15 Q. I get that, Mr. Lockwood. I understand
11:58:37 16 you didn't know, but if they told -- if you asked
11:58:40 17 them why did it take so long and they said we
11:58:43 18 didn't learn about it until the Notice of Claim,
11:58:46 19 they were leaving you with the impression, you just
11:58:48 20 told me, that that was fairly recent, that was
11:58:50 21 sometime in 2020, right?

11:58:51 22 A. That's -- yeah, that's what I'm --
11:58:54 23 that's what I'm thinking.

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11:58:54 1 Q. Okay. And now you know that the Notice
11:58:57 2 of Claim against the city that involved corporation
11:58:59 3 counsel's office was March 31st of 2017, three and
11:59:06 4 a half years earlier.

11:59:07 5 And I'm asking you now if that concerns you,
11:59:10 6 what you were told versus the time -- the actual
11:59:13 7 timeline that you see before you in Exhibit 39.

11:59:16 8 MS. HUGGINS: He's asked and answered.

9 BY MR. RUPP:

11:59:19 10 Q. I disagree.

11:59:20 11 I'm asking you if you're concerned now as
11:59:21 12 you sit here with what you were told by IAD.

11:59:25 13 MS. HUGGINS: Andrea, could you go back and
11:59:28 14 read that question and answer?

15 THE REPORTER: Sure.

11:59:29 16 MS. HUGGINS: The two questions prior, I
11:59:31 17 believe.

18 THE REPORTER: Sorry, I just want to make
19 sure that I find the right ones. Not where he just
20 said, "I get that, I understand you didn't know",
21 but before where he was asking about the concern --

22 MS. HUGGINS: Correct.

23 THE REPORTER: -- is that what you're

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1 talking about?

2 **MS. HUGGINS:** Yes.

3 **THE REPORTER:** Okay. Let me just make sure
4 I find the right one. Okay. I found them all.

5 (The above-requested question was then read
12:01:23 6 by the reporter.)

12:01:23 7 **BY MR. RUPP:**

12:01:24 8 **Q.** So what are those concerns, Mr. Lockwood?

12:01:26 9 **A.** Concerns is like three years, I mean,
12:01:33 10 why all of a sudden three years it comes in front
12:01:36 11 of me.

12:01:37 12 **Q.** Well, is there also a concern that IAD
12:01:40 13 may not have been telling you the truth about when
12:01:43 14 they actually commenced their investigation?

12:01:45 15 **A.** I think they were truthful.

12:01:53 16 **Q.** All right. Well, what happened then
12:01:55 17 that a Notice of Claim that was served on the city
12:01:58 18 in March 31 of 2017 didn't result in a final IAD
12:02:03 19 presentation of the investigation of the
12:02:05 20 commissioner for three and a half years if they
12:02:13 21 were being truthful with you?

12:02:13 22 **A.** For once they said that they tried to
12:02:15 23 get the complainant in to get statements and

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12:02:18 1 couldn't get him in to give statements.

12:02:20 2 Q. I see. And when did they tell you that
12:02:23 3 they tried to get -- bring those -- bring him in
12:02:26 4 for those statements?

12:02:27 5 A. They told me that in August.

12:02:29 6 Q. Well, no, when -- what was the
12:02:32 7 timeframe in which they were actually asking
12:02:35 8 Mr. Kistner to come in?

12:02:36 9 A. Oh.

12:02:39 10 Q. Let me help. Was it 2017?

12:02:41 11 A. I can't -- I can't remember when
12:02:50 12 exactly.

12:02:51 13 Q. Was it 2018?

12:02:53 14 A. I can't -- I can't remember.

12:02:53 15 Q. Was it 2019?

12:02:55 16 A. Only thing I can remember is they said
12:02:57 17 that they reached out to him and they couldn't get
12:03:01 18 him in for a statement.

12:03:02 19 Q. Mr. Lockwood, you have the ability as
12:03:03 20 the police commissioner to know exactly what date
12:03:06 21 the S -- the AID (sic) file on Mr. Kistner's
12:03:10 22 complaint was opened, don't you?

12:03:11 23 A. Repeat that again.

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12:03:15 1 Q. You as the police commissioner have
12:03:17 2 access to records that would tell you exactly when
12:03:21 3 IAD opened its investigation into Mr. Kistner's
12:03:24 4 complaint as set forth in the Notice of Claim,
12:03:27 5 right?

12:03:28 6 A. Yes, I -- yeah, I have the records.

12:03:30 7 Q. All right. Have you done that, have
12:03:32 8 you seen when the investigation actually was
12:03:34 9 opened? Apart from what IAD told you, have you
12:03:37 10 verified when they opened the investigation?

12:03:39 11 A. No. The first I learned of this case
12:03:42 12 was when they brought it in front of me.

12:03:44 13 Q. All right.

12:03:44 14 A. In August.

12:03:45 15 Q. But you have the ability now and you
12:03:47 16 had the ability then to know exactly when they
12:03:49 17 commenced the investigation, right?

12:03:50 18 A. Yes.

12:03:52 19 Q. And you had the ability now -- you have
12:03:55 20 the ability now and you had the ability then to
12:03:57 21 know exactly when Mr. Kistner brought his written
12:04:00 22 filed Notice of Claim against the city alleging
12:04:03 23 what happened to him on January 1, 2017, right?

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12:04:06 1 **A.** Yes.

12:04:06 2 **Q.** You had the ability to compare those
12:04:08 3 two dates and see whether there was any gap or
12:04:12 4 delay in IAD commencing its investigation, right?

12:04:15 5 **A.** Yes.

12:04:19 6 **Q.** And you haven't done that, have you?

12:04:21 7 **A.** Haven't done --

12:04:22 8 **Q.** You haven't done that, have you?

12:04:24 9 **A.** Done what?

12:04:25 10 **Q.** Compared the date the Notice of Claim
12:04:27 11 was filed with the date that IAD opened its
12:04:31 12 investigation?

12:04:31 13 **A.** No. I -- no, I haven't compared those.

12:04:35 14 **Q.** All right. So if it took over three
12:04:37 15 years for IAD even to open the investigation from
12:04:40 16 the date of the Notice of Claim, would that be a
12:04:43 17 concern to you?

12:04:44 18 **MS. HUGGINS:** Form. Asked and answered.

12:04:45 19 **THE WITNESS:** If it took three years for
12:04:55 20 them to open it, yes, it would be a concern.

12:04:57 21 **BY MR. RUPP:**

12:04:57 22 **Q.** All right. And that would be something
12:04:59 23 that you would want to make sure didn't happen

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12:05:01 1 again, right?

12:05:02 2 A. Yes.

12:05:07 3 MR. RUPP: All right. Andrea, can you mark
12:05:07 4 this?

12:05:09 5 THE REPORTER: Sure.

12:05:09 6 MR. RUPP: I guess that's 40.

7 The following was marked for Identification:

8 EXH. 40 Complaint.

12:05:34 9 BY MR. RUPP:

12:05:36 10 Q. All right. Mr. Lockwood, I'm going to
12:05:37 11 show you what's been marked Exhibit 40 for
12 12 identification.

12:05:41 13 I'm going to represent to you that that is a
12:05:43 14 copy of Mr. Kistner's federal court lawsuit against
12:05:47 15 the City of Buffalo including the verification
12:05:50 16 page.

12:05:50 17 It's 54 pages in length. It was filed in
12:05:56 18 the Western District -- United States District
12:05:57 19 Court for the Western District of New York on
12:06:00 20 March 30th of 2018. As you sit here today, have
12:06:04 21 you ever seen that complaint before?

12:06:05 22 A. Yes.

12:06:08 23 Q. All right. It actually names you as a

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12:06:11 1 defendant as the police commissioner of the City of
12:06:13 2 Buffalo; is that right?

12:06:14 3 A. Yes, but, again, my first name's
12:06:16 4 spelled wrong.

12:06:17 5 Q. Apologies for that. Did you review it
12:06:20 6 when it came in to you?

12:06:21 7 A. No.

12:06:24 8 Q. Did you know when it came in to you?

12:06:27 9 A. No.

12:06:28 10 Q. And do you know whether by the time
12:06:34 11 this complaint was filed a year after the notice of
12:06:35 12 complaint was filed, whether IAD had opened an
12:06:38 13 investigation into Mr. Kistner's complaints --
12:06:42 14 multiple complaints of police misconduct relating
12:06:44 15 to his arrest?

12:06:47 16 A. No, I -- I had no idea --

12:06:48 17 Q. Okay.

12:06:49 18 A. -- if they opened it up or not.

12:06:50 19 Q. And you still don't know, do you, as
12:06:53 20 you sit here today whether that investigation was
12:06:55 21 opened any time prior to March 30 of 2018, right?

12:06:59 22 A. Right.

12:07:02 23 Q. You don't know if it was opened any

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12:07:04 1 time in 2018, correct?

12:07:06 2 **A.** Correct.

12:07:06 3 **Q.** You don't know if it was opened any
12:07:08 4 time in 2019, do you?

12:07:09 5 **A.** No.

12:07:11 6 **Q.** And given the detailed allegations of
12:07:18 7 police misconduct where your department set forth
12:07:23 8 in this complaint, Mr. Lockwood, would it be of
12:07:27 9 concern to you to know that even after the
12:07:31 10 complaint was served on you and Mr. Derenda and the
12:07:36 11 City of Buffalo and four officers alleging
12:07:39 12 misconduct, that IAD did not open its investigation
12:07:43 13 into Mr. Kistner's complaints until sometime after
12:07:46 14 December of 2019?

12:07:48 15 **A.** Did you say would that be a concern?

12:07:56 16 **Q.** Yes.

12:07:56 17 **A.** It would be a concern, yes.

12:07:58 18 **Q.** And would that be in any way compliant
12:08:00 19 with the IAD protocol set forth in the MOP, to wait
12:08:08 20 that long to commence an investigation?

12:08:14 21 **A.** It would be a problem.

12:08:14 22 **Q.** And it would be a problem that you as
12:08:14 23 police commissioner would have the ability, if you

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12:08:19 1 chose, to seek remedies and try to rectify, am I
12:08:23 2 right?

12:08:27 3 **A.** Yes.

12:08:27 4 **Q.** And as of the date of this deposition,
12:08:30 5 October 14 of 2020, you have done nothing to
12:08:34 6 ascertain why IAD did not open an investigation
12:08:37 7 based on either Exhibit 39, the Notice of Claim, or
12:08:42 8 Exhibit 40, the complaint; is that right?

12:08:43 9 **MS. HUGGINS:** Form.

12:08:50 10 **THE WITNESS:** Repeat that.

12:08:52 11 **BY MR. RUPP:**

12:08:52 12 **Q.** I'm sorry?

12:08:53 13 **A.** Can you repeat that question?

12:08:55 14 **MR. RUPP:** Could you read that back, Andrea?

15 **THE REPORTER:** Sure.

16 (The above-requested question was then read
12:09:18 17 by the reporter.)

12:09:18 18 **THE WITNESS:** I'm not going to say I haven't
12:09:29 19 done nothing. I heard the case and, you know, I --
12:09:37 20 I was -- I heard the case and I was going by
12:09:41 21 exactly what was put in front of me. So --

12:09:43 22 **BY MR. RUPP:**

12:09:44 23 **Q.** Well, I'm talking about the delay from

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12:09:47 1 either the incident itself, filing the Notice of
12:09:50 2 Claim in March of 2017, or the filing of the
12:09:52 3 complaint in March of '18.

12:09:55 4 Do you know why it took that long from those
12:09:58 5 three dates for you to sit down in August of 2020
12:10:02 6 to go over the results of the investigation?

12:10:04 7 **A.** The reason why is because it came to me
12:10:10 8 in August because the investigator had completed
12:10:13 9 the investigation and that's when it came in front
12:10:16 10 of me to review.

12:10:18 11 **Q.** Right. But do you know why it took
12:10:19 12 that long?

12:10:20 13 **A.** Judging from the investigator, I mean,
12:10:25 14 talking to the investigator, investigator told me
12:10:28 15 that it took -- he couldn't get the complainant in
12:10:32 16 to get statements and that's why it took a while.

12:10:41 17 **Q.** Okay. Three and a half years?

12:10:43 18 **A.** The investigator told me they wasn't
12:10:49 19 notified about the incident until it -- the Notice
12:10:55 20 of Claim.

12:10:55 21 **Q.** But Mr. Lockwood, we've already
12:10:57 22 established that was March of 2017.

12:11:00 23 **MS. HUGGINS:** Form.

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12:11:01 1 **BY MR. RUPP:**

12:11:02 2 **Q.** Even if they got it a couple of days
12:11:05 3 after it was filed and served on the city, it would
12:11:08 4 still be April of 2017, right?

12:11:12 5 That's what they told you. That's when they
12:11:14 6 learned of Mr. Kistner's allegations was from the
12:11:17 7 Notice of Claim and you know now when it was filed,
12:11:19 8 right?

12:11:20 9 **MS. HUGGINS:** Form.

12:11:21 10 **THE WITNESS:** I would have to look at the
12:11:22 11 file again. Our file -- the internal affairs file
12:11:26 12 to really see when because from -- from --

13 **BY MR. RUPP:**

14 **Q.** I'm going to show you that.

12:11:30 15 **A.** -- from what they led me to is that
12:11:43 16 this -- that they didn't -- once they got the
12:11:46 17 Notice of Claim and, you know, I asked them what,
12:11:49 18 three years, and they were saying that well, we
12:11:52 19 just got this Notice of Claim from the -- from the
12:11:56 20 corporate counsel office.

12:11:58 21 **Q.** But that's not how it's supposed to
12:12:00 22 work, right?

12:12:01 23 **A.** What you mean?

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12:12:02 1 Q. They're supposed to give it over to IAD
12:12:04 2 immediately, aren't they?

12:12:05 3 A. You have to talk with the corporate
12:12:09 4 counsel on that.

12:12:09 5 Q. Well, I'm talking with the police
12:12:11 6 commissioner with the City of Buffalo.

12:12:11 7 A. I would assume they would give it to
12:12:14 8 me, but if -- if something happened between there
12:12:16 9 and internal affairs office, I -- like I said, I
12:12:20 10 wasn't commissioner then. So --

12:12:22 11 MR. RUPP: Well, if you could mark that,
12:12:25 12 Andrea.

13 The following was marked for Identification:

14 EXH. 41 Letter dated 2/8/19.

12:12:47 15 BY MR. RUPP:

12:12:53 16 Q. Showing you what's been marked
12:12:55 17 Exhibit 41, Mr. Lockwood, a copy of a letter. I
12:13:00 18 believe your name is -- is your name misspelled
12:13:03 19 again? Is your name misspelled again?

12:13:08 20 A. Yes.

12:13:09 21 Q. Okay. Apologies again.

12:13:11 22 MS. HUGGINS: Before you proceed with
12:13:12 23 questioning, has this ever been provided to my

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12:13:14 1 office?

12:13:15 2 **MR. RUPP:** I don't know. Did you ask for
12:13:17 3 it? I mean, it was certainly sent to the City of
12:13:20 4 Buffalo. I don't know if it's provided -- been
12:13:21 5 provided back to my office from your -- from your
12:13:24 6 files.

12:13:25 7 **MS. HUGGINS:** I don't believe I've ever seen
12:13:28 8 this before. I may be incorrect because I don't
12:13:32 9 have --

12:13:32 10 **MR. RUPP:** Well, Mr. Kistner testified --

12:13:33 11 **MS. HUGGINS:** Can we go off the record? I
12 don't want to --

13 **MR. RUPP:** Oh.

12:13:35 14 **MS. HUGGINS:** -- belabor the record with
12:13:36 15 this.

12:13:36 16 **MR. RUPP:** Oh, all right. Sure.

12:13:38 17 **THE VIDEOGRAPHER:** Going off the record at
12:13:39 18 12:13.

12:13:39 19 (Discussion off the record.)

12:16:22 20 **THE VIDEOGRAPHER:** Okay. We are going back
12:16:26 21 on the record, time is 12:16.

12:16:30 22 **BY MR. RUPP:**

12:16:32 23 **Q.** All right. Mr. Lockwood, have you ever

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12:16:34 1 seen a copy of Exhibit 41? It was addressed to you
12:16:43 2 as the City of Buffalo police commissioner and has
12:16:47 3 a date of February 8, 2019. Did you ever receive a
12:16:51 4 copy of that on or about that date?

12:16:53 5 **A.** No.

12:16:53 6 **Q.** All right. In connection with
12:16:55 7 discovery demands served by my office on the City
12:17:00 8 of Buffalo and corporation counsel's office, did
12:17:03 9 you make a search or arrange to have a search made
12:17:05 10 of your files as police commissioner to identify
12:17:09 11 responsive documentation that was relevant to
12:17:13 12 Mr. Kistner's lawsuit against the city?

12:17:15 13 **A.** No.

12:17:15 14 **Q.** All right. You've never been asked to
12:17:17 15 do that?

12:17:17 16 **A.** No.

12:17:17 17 **Q.** All right. I'm going to make a request
12:17:20 18 of you on this record that you, following the end
12:17:26 19 of this deposition, go back to your office and
12:17:28 20 arrange for a search to be made for Mr. Kistner's
12:17:32 21 letter and any other documentation that is relevant
12:17:36 22 to Mr. Kistner's claim against the city and would
12:17:39 23 be responsive to our discovery demands.

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12:17:41 1 And I'd ask you to talk with Ms. Huggins
12:17:44 2 about what those demands were, would you do that
12:17:46 3 for me?

12:17:47 4 **A.** Yes.

12:17:47 5 **Q.** Okay.

12:17:48 6 **MS. HUGGINS:** And I understand your -- your
12:17:50 7 request. Off the record we had a discussion
12:17:57 8 regarding what has been marked as Exhibit 41.

12:18:00 9 I do not believe as I sit here without the
12:18:02 10 complete file in front of me, that I have ever
12:18:05 11 received a copy of this. I do believe that would
12:18:07 12 be responsive to demands that the defendants have
12:18:09 13 made of plaintiff.

12:18:13 14 So I would ask at this time for any and all
12:18:17 15 correspondence from Mr. Kistner regarding this
12:18:20 16 incident that was directed to the City of Buffalo
12:18:22 17 or at any of the named defendants to be produced
12:18:25 18 likewise.

19 **BY MR. RUPP:**

12:18:26 20 **Q.** And I will make that search and I'll
12:18:28 21 contact Mr. Kistner, but it's my understanding this
12:18:32 22 is the only letter that he ever sent to any of the
12:18:34 23 defendants or the city in any capacity in

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12:18:37 1 connection with his complaints about the January 1,
12:18:40 2 2017, incident. So I think you have it, but I will
12:18:42 3 make further inquiry.

12:18:45 4 All right. Mr. Lockwood, so -- I'm sorry, I
12:18:52 5 don't remember whether you actually answered this
12:18:54 6 question.

12:18:54 7 Have you ever seen this before in sum or
12:18:57 8 substance, this letter or maybe with a slightly
12:18:59 9 different date on it?

12:19:00 10 A. I never seen this letter.

12:19:02 11 Q. Okay. If you had received this letter,
12:19:04 12 is that -- first of all, you mentioned 64 Franklin
12:19:07 13 Street I think as your -- or Court Street as your
12:19:09 14 address. Would a letter addressed to you at 74
12:19:13 15 Franklin Street get to you?

12:19:16 16 MS. HUGGINS: Form.

12:19:17 17 THE WITNESS: Yes.

12:19:18 18 BY MR. RUPP:

12:19:18 19 Q. I mean, is that a police department
12:19:20 20 address?

12:19:20 21 MS. HUGGINS: Well, form. I mean --
12:19:26 22 timeframe.

12:19:28 23 MR. RUPP: Okay.

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12:19:28 1 **MS. HUGGINS:** Yeah.

12:19:29 2 **BY MR. RUPP:**

12:19:29 3 **Q.** 2019, February in particular, would 74
12:19:34 4 Franklin -- does 74 Franklin Street ring a bell to
12:19:36 5 you?

12:19:36 6 **A.** Yes.

12:19:36 7 **Q.** What is it?

12:19:37 8 **A.** Former police headquarters.

12:19:39 9 **Q.** Former police headquarters? Okay.
12:19:42 10 When did it move?

12:19:43 11 **A.** We moved in, I believe, it was 2018.

12:19:48 12 **Q.** Okay. Would a letter sent in February
12:19:50 13 of 2019 to the former police headquarters have
12:19:53 14 gotten to you, do you know?

12:19:54 15 **A.** I don't -- letters come. I can't
12:20:03 16 say -- I -- I never seen this letter before.

12:20:05 17 **Q.** Okay. Will you take a moment to read
12:20:08 18 it? Did you have a moment earlier to read it?

12:20:11 19 **A.** No.

12:20:12 20 **Q.** All right. You can see that
12:20:14 21 Mr. Kistner asks that his letter be forwarded to
12:20:18 22 Internal Affairs Division immediately; is that
12:20:21 23 right?

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12:20:21 1 **MS. HUGGINS:** Why don't you take a moment
12:20:23 2 and -- and read it over.

12:20:52 3 **THE WITNESS:** Okay.

12:20:53 4 **BY MR. RUPP:**

12:20:53 5 **Q.** All right. So in that letter he says
12:20:55 6 he's enclosing a copy of the complaint which we
12:20:58 7 marked as Exhibit 40, right?

12:20:58 8 **A.** Yes.

12:20:58 9 **Q.** And he's asking -- he's saying send
12:21:00 10 this on to IAD immediately, right?

12:21:03 11 **A.** Yes.

12:21:03 12 **Q.** And he's saying that let him know when
12:21:07 13 the investigation begins, right?

12:21:10 14 **A.** Yes.

12:21:10 15 **Q.** And if you need to speak with him about
12:21:13 16 the officers acts and omissions, right?

12:21:16 17 **A.** Yes.

12:21:16 18 **Q.** Now, my question to you is if you had
12:21:18 19 received that letter, Mr. Lockwood, would you have
12:21:20 20 done that, would you have forwarded his complaint
12:21:22 21 to IAD like you testified about earlier?

12:21:24 22 **A.** Yes.

12:21:24 23 **Q.** Okay. And would you have expected that

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12:21:27 1 an IAD investigation would have been commenced at
12:21:30 2 that time?

12:21:30 3 **A.** Yes.

12:21:30 4 **Q.** Okay. I want to play a clip for you
12:21:39 5 now. I'm going to ask you a question about it. Do
12:21:50 6 you know a Captain Rinaldo?

12:21:52 7 **A.** Yes.

12:21:52 8 **Q.** What is Captain Rinaldo's position with
12:21:56 9 the Buffalo Police Department, if any?

12:21:58 10 **A.** He's my chief of staff.

12:22:17 11 **MR. RUPP:** Okay. Tyler, I may need you to
12:22:19 12 do your thing with the --

12:22:21 13 **THE VIDEOGRAPHER:** Sure.

12:22:21 14 **MR. RUPP:** -- video. I'll see if I can get
12:22:23 15 it up and running.

12:22:24 16 **MS. HUGGINS:** I'd ask that the video be
12:22:26 17 marked as an exhibit.

12:22:27 18 **MR. RUPP:** Yeah. All right. That's fine.
12:22:33 19 Can you mark that? Probably on the metal part, the
12:22:36 20 silver part.

12:22:38 21 **THE REPORTER:** Do you want to go off the
12:22:39 22 record for this?

12:22:41 23 **THE VIDEOGRAPHER:** Yeah, let's go off the

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12:22:43 1 record. All right. Going off the record at 12:22.

2 **The following was marked for Identification:**

3 **EXH. 42 USB flash drive.**

12:24:18 4 **THE VIDEOGRAPHER:** All right. Going back on
12:24:20 5 the record, time is 12:24.

6 **BY MR. RUPP:**

12:24:25 7 **Q.** All right. Mr. Lockwood, we have
12:24:27 8 marked Exhibit 42 as an exhibit in this case for
12:24:32 9 identification purposes. It's a USB flash drive
12:24:35 10 that contains a single file and that file name is
12:24:40 11 20-10-14-08-48-28[1]_segment_0_WMV, apparently
12:24:57 12 there's some additional information after that, V9.

12:25:07 13 All right. And I would like to play part of
12:25:10 14 that for you and before I do that, if you would
12:25:15 15 take a look at the screen above my head.

12:25:20 16 Can you tell me if you recognize the
12:25:23 17 individual who is seated there in the sport jacket
12:25:28 18 and the blue button-down shirt?

12:25:30 19 **A.** Captain Jeff Rinaldo.

12:25:31 20 **Q.** And, again, what is Mr. Captain Rinaldo's
12:25:35 21 position with the Buffalo Police Department?

12:25:37 22 **A.** He's my chief of staff.

12:25:38 23 **Q.** Okay. And he -- does he sometimes

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12:25:41 1 serve as a spokesman for your office?

12:25:44 2 **A.** Yes.

12:25:44 3 **Q.** And as part of his role, does he
12:25:46 4 sometimes give media interviews?

12:25:48 5 **A.** Yes.

12:25:48 6 **Q.** And does he tell the truth in those
12:25:50 7 media interviews?

12:25:51 8 **A.** Yes.

12:25:51 9 **Q.** Is he ever instructed by you to tell
12:25:54 10 anything other than the truth to the media about
12:25:57 11 the Buffalo Police Department and its workings?

12:26:00 12 **A.** He was always instructed to tell the
12:26:03 13 truth.

12:26:03 14 **Q.** Okay. And you would expect him to?

12:26:05 15 **A.** Yes.

12:26:05 16 **Q.** Okay.

12:26:05 17 **MS. HUGGINS:** When we were off the record a
12:26:08 18 moment earlier, I made a request for all statements
12:26:09 19 by City of Buffalo employees that were intended to
12:26:12 20 be used in discovery in this process.

12:26:14 21 I was handed a USB that counsel's
12:26:18 22 represented that contain this -- this file, but I
12:26:20 23 would just --

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1 **MR. RUPP:** Yeah.

12:26:20 2 **MS. HUGGINS:** -- again, renew that discovery
3 request.

4 **BY MR. RUPP:**

12:26:24 5 **Q.** Okay. I'm going to play a segment for
12:26:26 6 you, Mr. Lockwood, and ask you to listen to what
12:26:30 7 Mr. Rinaldo had to say on a WIVB broadcast
12:26:36 8 television news segment that was run by that
12:26:38 9 channel sometime in February of 2020.

12:26:46 10 **MS. HUGGINS:** And the record should reflect
12:26:48 11 that you're beginning at --

12:26:49 12 **MR. RUPP:** I'm sorry.

12:26:50 13 **MS. HUGGINS:** -- one -- one minute and
12:26:52 14 40 seconds.

15 **BY MR. RUPP:**

12:26:53 16 **Q.** One minute and 38 seconds is where
12:26:55 17 we're going to start it.

12:27:00 18 "There's an internal affairs case that was
12:27:04 19 opened up which is customary practice any time
12:27:06 20 there's some type of civil litigation concerning a
12:27:08 21 Buffalo police officer."

12:27:11 22 All right. Did you catch that, Mr. Lockwood?

12:27:13 23 **A.** Mm-hmm. Yes.

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12:27:14 1 Q. I'm going to just play for you another
12:27:17 2 segment. This one's going to start at 1:56.

12:27:30 3 "From the department's standpoint, we still
12:27:32 4 have to investigate now what exactly happened.
12:27:35 5 You -- you can't defend yourself in a civil lawsuit
12:27:37 6 and not have any type of internal investigation to
12:27:40 7 determine exactly what the circumstances were
12:27:43 8 surrounding the incident."

12:27:46 9 Okay. Mr. Lockwood, is what Captain Rinaldo
12:27:51 10 said to the Channel 4 reporter in that interview
12:27:57 11 accurate in terms of your expectations for IAD
12:28:04 12 investigations to commence when a lawsuit is
12:28:06 13 commenced against the City of Buffalo?

14 MS. HUGGINS: Form.

12:28:09 15 THE WITNESS: Yes.

12:28:09 16 BY MR. RUPP:

12:28:09 17 Q. Okay. And do you, as you sit here,
12:28:13 18 know whether that was actually done in this case?

12:28:16 19 A. Was an investigation --

12:28:21 20 Q. Commenced --

12:28:22 21 A. -- commenced?

12:28:23 22 Q. -- with the commencement of the
12:28:25 23 lawsuit, the filing and Notice of Claim?

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12:28:26 1 **A.** Yes.

12:28:29 2 **Q.** Okay. And how do you know that?

12:28:30 3 **A.** When they brought the case in front of
12:28:33 4 me.

12:28:33 5 **Q.** Okay. And that was what they -- they
12:28:35 6 told you they commenced it shortly after the filing
12:28:37 7 of the Notice of Claim. I think you testified to
12:28:39 8 that earlier, right?

12:28:40 9 **A.** Yes.

12:28:40 10 **MS. HUGGINS:** Form.

12:28:41 11 **BY MR. RUPP:**

12:28:41 12 **Q.** Okay. And I'm asking you if you know
12:28:43 13 whether that was true or not. Not what you were
12:28:45 14 told. Was that true?

12:28:46 15 **A.** If they told me that, then I took it to
12:28:50 16 be true.

12:28:50 17 **Q.** Okay. But my question's slightly
12:28:52 18 different, Mr. Lockwood. Do you know whether that
12:28:55 19 was true or not?

12:28:56 20 **A.** I have no other reason to think that it
12:29:08 21 was not true.

12:29:09 22 **Q.** Well --

12:29:09 23 **A.** They -- they weren't being truthful.

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12:29:12 1 Q. All right. Would -- would the date
12:29:13 2 that the IAD investigation was opened be reflected
12:29:17 3 on the paperwork that you reviewed in August of
12:29:19 4 2020 when you had the sit down with the IAD
12:29:24 5 lieutenant?

12:29:25 6 A. I'm -- I'm trying to think back to
12:29:34 7 that.

12:29:37 8 Q. Well, to that one or any other one. Do
12:29:40 9 you know if the date the file was opened is
12:29:42 10 reflected on any of the paperwork?

12:29:44 11 A. It should be reflected on --

12 Q. All right.

12:29:46 13 A. -- the paperwork in the file, yes.

12:29:47 14 Q. Well, we're going to look at that in
12:29:49 15 just a moment and see if it is. I don't know the
12:29:51 16 answer myself.

12:29:52 17 But if I told you that the City of Buffalo
12:29:55 18 Police Department's IAD did not commence an
12:29:59 19 investigation of Mr. Kistner's allegations until
12:30:02 20 after WIVB ran a news report on his complaints in
12:30:07 21 December of '19 -- December of 2019, would you have
12:30:10 22 any reason to disagree with me?

12:30:15 23 A. If the paperwork reflect that and --

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12:30:18 1 no, I -- no.

12:30:19 2 Q. Okay. Now, who was the IAD
12:30:33 3 investigator with whom you met in August of 2020
12:30:37 4 relating to Mr. Kistner's complaint?

12:30:39 5 A. Lieutenant Louis Kelly.

12:30:41 6 Q. And do you know -- is it detective
12:30:45 7 Louis Kelly or lieutenant?

12:30:46 8 A. Lieutenant.

12:30:47 9 Q. Do you know -- did you know
12:30:49 10 Lieutenant Kelly before that time?

12:30:50 11 A. Yes.

12:30:52 12 Q. And do you know how long he's been with
12:30:55 13 IAD?

12:30:55 14 A. No.

12:30:58 15 Q. Okay.

12:30:59 16 A. No, I don't know.

12:31:01 17 Q. And did Lieutenant Kelly present you
12:31:04 18 with items and materials to review from his
12:31:10 19 investigation?

12:31:10 20 A. Before we had file review?

12:31:15 21 Q. Well -- okay. I'll ask -- yeah, sure.
12:31:17 22 Before you had the file review, did he give you
12:31:19 23 anything?

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12:31:20 1 **A.** No.

12:31:20 2 **Q.** Okay. At the file review did he give
12:31:22 3 you anything?

12:31:23 4 **A.** He -- no, he had the file there and he
12:31:29 5 told me what the investigation was about.

12:31:34 6 **Q.** All right. Now, last night just before
12:31:39 7 5 o'clock, Ms. Huggins provided me with materials
12:31:43 8 that appear to be from the IAD file that you went
12:31:50 9 over with Lieutenant Kelly.

12:31:52 10 Were you aware that that disclosure was in
12:31:55 11 process to us last evening, October 13, 2020?

12:31:59 12 **A.** No.

12:32:03 13 **MR. RUPP:** All right. I went through it
12:32:04 14 rather than try to cancel your deposition here
12:32:07 15 today to give you more time. So I'm going to ask
12:32:11 16 that this be marked as Exhibit 42.

17 **THE REPORTER:** I think it's 43, isn't it --

18 **MR. RUPP:** Is it?

19 **THE REPORTER:** -- or no? Wasn't that 42?

20 **MR. RUPP:** You're right.

21 **THE REPORTER:** Okay.

22 **MR. RUPP:** Thank you.

23 **THE REPORTER:** Yeah, you're welcome.

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1 The following was marked for Identification:

2	EXH. 43	Case index.
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12:32:41 3 BY MR. RUPP:

12:33:04 4 Q. Mr. Lockwood, have you seen Exhibit 43
12:33:08 5 before?

12:33:09 6 **A.** In the case file, yes.

12:33:10 7 Q. All right. And this was the case file
12:33:12 8 that you reviewed with Lieutenant Kelly from IAD in
12:33:15 9 August of 2020; is that right?

12:33:17 10 | **A.** Yes.

12:33:17 11 Q. All right. Now, the first thing I want
12:33:19 12 to direct you to is the bracketed information at
12:33:24 13 the top of the form that says case index IAD case
12:33:29 14 EC2019-46. Do you see that?

12:33:33 15	A. Yes.
-------------	----------------

12:33:33 16 | Q. Do you know what EC2019-046 means?

12:33:39 17 | **A.** No.

12:33:45 18 Q. All right. Do you recognize that as
12:33:48 19 the IAD case file number?

12:33:51 20 **A.** Yes, I recognize that's a case number.

12:33:55 21 They use different letters --

12:33:58 22 Q. And do you know what EC stands for?

12:34:00 23 | **A.** Internal complaint.

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12:34:06 1 Q. All right. In what way --

12:34:07 2 A. I'm not sure -- I'm not sure if that's
12:34:09 3 what that means, though.

12:34:11 4 Q. Okay.

12:34:11 5 A. I want to be clear about that. I'm not
12:34:13 6 sure.

12:34:13 7 Q. Now, there appears to be -- the
12:34:16 8 numbers 2019 appear to refer to a year, 2019. Do
12:34:22 9 you agree or disagree?

12:34:23 10 A. I agree.

12:34:24 11 Q. And would that be the year that the
12:34:26 12 file was opened and would the suffix 046 be the
12:34:30 13 number of the IAD file that was commenced in that
12:34:33 14 year?

12:34:33 15 A. Yes.

12:34:33 16 Q. All right. So looking at this now,
12:34:38 17 Mr. Lockwood, do you have an understanding that the
12:34:41 18 IAD investigation file was not commenced until
12:34:46 19 sometime in 2019?

12:34:48 20 A. Yes.

12:34:49 21 Q. And do you understand that it was not
12:34:51 22 commenced until after 45 other IAD complaints had
12:34:56 23 already been opened in that calendar year?

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12:35:00 1 A. Yes.

12:35:01 2 Q. Do you know how many IAD complaints
12:35:03 3 there were total for all of 2019?

12:35:06 4 A. No.

12:35:06 5 Q. All right. Do you know how many IAD
12:35:09 6 complaints there are in an average year in the
12:35:12 7 Buffalo Police Department?

12:35:12 8 A. It varies.

12:35:19 9 Q. Would you believe this to be later in
12:35:22 10 the year 2019, specifically December of 2019, after
12:35:27 11 Channel 4 ran its report on Mr. Kistner's
12:35:30 12 allegations and showed the video of his accident?

12:35:33 13 A. Can you rephrase? Are you asking --
12:35:45 14 rephrase the question.

12:35:46 15 Q. Yeah. Based on the suffix of 46, do
12:35:49 16 you believe that it is at least possible that this
12:35:51 17 IAD file number was not opened until sometime in
12:35:54 18 December of 2019 after Channel 4 ran the report
12:35:59 19 showing Mr. Kistner being struck by the police SUV?

12:36:02 20 A. I can't say that it was opened after
12:36:08 21 they ran the report. I'm not sure.

12:36:09 22 Q. You can't say for sure?

12:36:11 23 A. Right.

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12:36:12 1 Q. But we do know that 45 other IAD
12:36:15 2 complaints had been opened, right?

12:36:17 3 A. Yes.

12:36:17 4 Q. I mean, there's certainly not 45 open
12:36:20 5 in a single month, right?

12:36:21 6 A. Right.

12:36:22 7 Q. That would be a disaster for your
12:36:23 8 department, right?

12:36:24 9 MS. HUGGINS: Form.

12:36:25 10 THE WITNESS: It wouldn't be good.

12:36:26 11 BY MR. RUPP:

12:36:27 12 Q. Okay. All right. So fair to say this
12:36:29 13 is sometime into 2019 that we would get up to a
12:36:33 14 count of 46 different IAD investigations, right?

12:36:37 15 A. Yes.

12:36:37 16 Q. And probably in the latter half of the
12:36:39 17 year, right?

12:36:39 18 A. Again, I don't know what part of the
12:36:43 19 year we was at --

20 Q. Okay.

12:36:47 21 A. -- with 46.

12:36:47 22 Q. But you could find out, couldn't you?

12:36:48 23 A. Yeah, I can go back and find out.

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12:36:50 1 Q. I mean, you could go back to your
12:36:50 2 office, you could make a call over to the inspector
12:36:53 3 who heads-up IAD and you could say I want to know
12:36:56 4 when that Kistner file was open for the first time
12:37:00 5 at IAD, couldn't you do that?

12:37:01 6 A. Yes.

12:37:01 7 Q. All right. And if you found out that
12:37:04 8 it wasn't open until December of 2019, three and a
12:37:09 9 half years after the incident, three and a half
12:37:12 10 years after the Notice of Claim, and two and a half
12:37:14 11 years after the lawsuit, and two years after
12:37:19 12 Mr. Kistner wrote his letter, you would have
12:37:22 13 concerns about that, would you not?

12:37:23 14 A. Yes.

12:37:23 15 MS. HUGGINS: Form.

12:37:24 16 BY MR. RUPP:

12:37:25 17 Q. Now, I want to ask you the information
12:37:28 18 that's listed on this, it appears to be one page
12:37:31 19 only and that was how it was disclosed by
12:37:34 20 Ms. Huggins to my office.

12:37:36 21 Is this all of the information that you went
12:37:38 22 over with Lieutenant Kelly in August of 2020
12:37:40 23 relative to Mr. Kistner's IAD case?

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12:37:43 1 A. Yes.

12:37:44 2 Q. All right. I've noticed on there that
12:37:47 3 I do not see, Mr. Lockwood, that it references the
12:37:52 4 video of the actual incident and Mr. Kistner being
12:37:56 5 struck. Did you ever view that video?

12:37:58 6 A. No. I saw it -- are you saying did
12:38:08 7 internal affairs --

12:38:08 8 Q. Yeah.

12:38:08 9 A. -- show the video to me?

12:38:10 10 Q. Yeah. Did internal affairs show you
12:38:13 11 the video?

12:38:13 12 A. No, I didn't -- I saw it on the news, I
12:38:18 13 believe it was, which you was showing up there.

12:38:20 14 Q. Before or after you sat down with
12:38:23 15 Lieutenant Kelly?

12:38:24 16 A. Let me think. I can't -- I want to say
12:38:40 17 before.

12:38:42 18 Q. Well, did you review it as -- to
12:38:46 19 determine whether Mr. Kistner's allegations were
12:38:50 20 true or false, that he was struck by the SUV
12:38:53 21 operated by Officer Lauren McDermott?

12:38:57 22 A. Did I what? Can you say it again?

12:39:02 23 Q. Mr. Lockwood, you were aware that

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12:39:04 1 Mr. Kistner claimed --

12:39:04 2 A. Right.

12:39:05 3 Q. -- that Officer Lauren McDermott

12:39:07 4 negligently struck him with the SUV, right?

12:39:10 5 A. Mm-hmm. Yes.

12:39:12 6 Q. Is that a yes?

12:39:13 7 A. Yes, yes.

12:39:13 8 Q. And you were aware that

12:39:16 9 Officer McDermott claimed that he threw himself at

12:39:19 10 the SUV trying to hurt himself or it?

12:39:22 11 A. Yes.

12:39:22 12 Q. Okay. You knew that was one of the

12:39:25 13 significant issues that was part of the IAD

12:39:28 14 investigation was who was telling the truth, right?

12:39:30 15 A. Yes.

12:39:30 16 Q. And are you telling me that in the

12:39:32 17 course of reviewing the IAD file with

12:39:34 18 Lieutenant Kelly, you didn't look at the video to

12:39:37 19 see who was telling the truth?

12:39:39 20 A. I saw the video. I saw the video on --

12:39:43 21 Q. So what was -- what was your

12:39:45 22 conclusion?

12:39:45 23 A. My conclusion was that it -- I couldn't

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12:39:50 1 actually say that she intentionally hit the man
12:39:57 2 with the vehicle.

12:39:58 3 Q. Well, did she negligently hit the man
12:40:01 4 with the vehicle?

12:40:02 5 A. I -- that I -- with the -- from the
12:40:04 6 investigation, it never showed that she was
12:40:09 7 negligent or that she intentionally hit him.
12:40:11 8 And -- and from what I see -- saw in the video, I
12:40:16 9 couldn't -- couldn't determine.

12:40:18 10 Q. Well, you could see that she hit him
12:40:21 11 with a moving SUV and knocked him to the ground,
12:40:25 12 right?

12:40:25 13 MS. HUGGINS: Form.

12:40:25 14 THE WITNESS: I can see that he was next to
12:40:35 15 the vehicle and all I seen was him go back. And,
12:40:40 16 you know, it wasn't like -- I couldn't determine if
12:40:44 17 she negligently or intentionally hit him with the
12:40:46 18 vehicle. I just couldn't determine that.

12:40:48 19 BY MR. RUPP:

12:40:49 20 Q. Okay. Could you tell whether she hit
12:40:51 21 him at all with the vehicle, whether negligently,
12:40:53 22 intentionally, or some other way?

12:40:55 23 A. It was -- no, I couldn't -- I

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12:40:56 1 couldn't -- I couldn't tell.

12:40:58 2 Q. You couldn't tell?

12:40:59 3 A. No.

12:41:16 4 Q. All right. I'm going to show you that
12:41:20 5 video, Mr. Lockwood, again which was marked
12:41:23 6 Exhibit 11 at an earlier deposition and was gone
12:41:28 7 over with every officer who was at the scene that
12:41:30 8 day.

12:41:31 9 A. Mm-hmm.

12:41:31 10 Q. And I'm going to ask you some questions
12:41:36 11 about what you see in that video. All right.
12:41:58 12 Mr. Lockwood, can you see what's depicted on the
12:42:00 13 video screen above my head?

12:42:03 14 A. Yes.

12:42:04 15 Q. Okay.

12:42:04 16 A. It's very distorted, though.

12:42:05 17 Q. Sure. It's a surveillance video,
12:42:07 18 right?

12:42:08 19 A. I don't know what the -- where that
12:42:12 20 video -- you said surveillance video?

12:42:14 21 Q. You don't recognize that as a
12:42:15 22 surveillance video with camera angle and the
12:42:18 23 notation on top?

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12:42:19 1 **A.** Yeah. Yeah, I mean --

12:42:20 2 **Q.** Okay.

12:42:20 3 **A.** Yeah, it's a video.

12:42:22 4 **Q.** Okay. Now, do you see the two City of
12:42:25 5 Buffalo black-and-white police SUVs parked side by
12:42:29 6 side there on Schmarbeck Avenue?

12:42:31 7 **MS. HUGGINS:** Can we just identify the
12:42:32 8 exhibit for the record?

12:42:34 9 **MR. RUPP:** I did. It's Exhibit 11 marked at
12:42:37 10 a prior deposition.

12:42:38 11 **MS. HUGGINS:** I -- I apologize, I didn't
12:42:39 12 hear that.

12:42:40 13 **BY MR. RUPP:**

12:42:40 14 **Q.** Okay. Mr. Lockwood, do you see two
15 police vehicles parked in that street, Schmarbeck
12:42:43 16 Avenue?

12:42:43 17 **A.** Yes.

12:42:44 18 **Q.** And do you recognize that Schmarbeck is
12:42:46 19 being within the jurisdictional boundaries of C
12:42:49 20 district?

12:42:49 21 **A.** Yes.

12:42:50 22 **Q.** All right. And do you see an
12:42:52 23 individual approaching the SUV that's parked in the

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12:42:56 1 middle of the street?

12:42:57 2 A. Yes.

12:42:57 3 Q. All right. I'm going to represent to
12:42:59 4 you that that's Mr. Kistner. Do you have any
12:43:00 5 reason to disagree with me?

12:43:03 6 A. No.

12:43:03 7 Q. And you've seen this video before,
12:43:05 8 right?

12:43:05 9 A. Mm-hmm. Yes.

12:43:05 10 Q. Is that a yes?

12:43:06 11 A. Yes. Yes, I'm sorry.

12:43:07 12 Q. And you know that's Mr. Kistner, right?

12:43:08 13 A. Yes.

12:43:09 14 Q. Okay. There's no dispute about that,
12:43:11 15 is there?

12:43:11 16 A. No.

12:43:12 17 Q. Okay. So I want you to watch
12:43:15 18 Mr. Kistner as the first police SUV pulls away. Do
12:43:21 19 you see that police SUV went by him and proceeded
12:43:24 20 down Schmarbeck?

12:43:25 21 A. Mm-hmm.

12:43:26 22 Q. Is that a yes?

12:43:26 23 A. Yes. Sorry.

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12:43:27 1 Q. All right. Do you still see

12:43:28 2 Mr. Kistner in the street?

12:43:29 3 A. Yes.

12:43:30 4 Q. Do you see the other police SUV?

12:43:31 5 A. Yes.

12:43:32 6 Q. Do you know who was operating the

12:43:33 7 second police SUV?

12:43:37 8 A. The report -- McDermott.

12:43:41 9 Q. McDermott. Do you know whether she had

12:43:44 10 a passenger or not?

12:43:46 11 A. Jenny Velez.

12:43:48 12 Q. Who's now a lieutenant, right?

12:43:50 13 A. Yes.

12:43:50 14 Q. At the time was a patrol officer,

12:43:52 15 correct?

12:43:52 16 A. Yes.

12:43:52 17 Q. Do you know who's in the first SUV

12:43:54 18 that's depicted in the -- more to the right of the

12:43:57 19 screen?

12:43:57 20 A. Schultz and I -- pronunciation for the

12:44:06 21 guy -- the other guy begin with an M. I can't

12:44:08 22 think of his name right now.

12:44:08 23 Q. Moriarity?

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12:44:09 1 A. Moriarity, yeah.

12:44:11 2 Q. And Moriarity was on probation, right,
12:44:13 3 being trained?

12:44:14 4 A. That I'm not sure.

12:44:16 5 Q. Okay. And Schultz is in the
12:44:18 6 passenger's seat of that front SUV?

12:44:20 7 A. Yes.

12:44:20 8 Q. All right. Do you know Officer Schultz?

12:44:22 9 A. I know him. Yeah, I know him from
12:44:27 10 the -- just the job officer.

12:44:28 11 Q. Do you know him from any other issues
12:44:32 12 that Officer Schultz has had with citizen
12:44:37 13 complaints against him for excessive force?

12:44:39 14 A. Since I've been commissioner, I haven't
12:44:51 15 had no excessive force complaints on him.

12:44:56 16 Q. You know that Officer Schultz was
12:44:58 17 the -- was the officer who was involved in that
12:44:59 18 shooting that resulted in a four and a half million
12:45:02 19 dollar settlement against the City of Buffalo,
12:45:06 20 right?

21 A. Yes.

12:45:06 22 Q. Are you aware that Officer Schultz is
12:45:09 23 in the top 10 percent list of excessive force

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12:45:12 1 complaints against City of Buffalo police officers?

12:45:14 2 A. I'm not aware of that.

12:45:17 3 Q. Are you aware that he's on the top 10
12:45:19 4 percent list for complaints generally against City
12:45:21 5 of Buffalo police officers?

12:45:23 6 A. No.

12:45:26 7 Q. All right. I want you to continue to
12:45:28 8 watch that video as Mr. Kistner approaches the
12:45:32 9 second SUV.

12:45:33 10 And I want you to pay particular attention
12:45:35 11 to whether the SUV is in motion going forward when
12:45:40 12 contact is made with Mr. Kistner. Were you able to
12:45:49 13 see that, Mr. Lockwood?

12:45:50 14 A. Mm-hmm.

12:45:51 15 Q. Is that a yes?

12:45:52 16 A. Yes. I'm sorry.

12:45:53 17 Q. My question is at the time of contact
12:45:55 18 between the SUV and Mr. Kistner, was the police SUV
12:45:59 19 in motion going forward towards him?

12:46:01 20 A. Yes.

12:46:02 21 Q. All right. And based on what you told
12:46:04 22 me earlier, that would absolutely then be a police
12:46:08 23 vehicle involved accident that would trigger a

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12:46:12 1 radio call to dispatch, a lieutenant, the Accident
12:46:17 2 Investigation Unit, and IAD all going to the scene,
12:46:19 3 correct?

12:46:19 4 A. Yes.

12:46:20 5 Q. Do you know if any of that happened in
12:46:23 6 connection with Mr. Kistner's incident as depicted
12:46:25 7 in the video marked as Exhibit 11?

12:46:27 8 A. No.

12:46:28 9 Q. Do you know whether it did or didn't
12:46:30 10 happen?

12:46:31 11 A. In the files it didn't -- no, it didn't
12:46:35 12 happen. I don't know internal affairs -- I -- no.

12:46:39 13 Q. All right. You knew that in August of
12:46:41 14 2020 that that incident that's depicted in that
12:46:45 15 video that you saw at some point was never reported
12:46:49 16 to the lieutenant, to IAD, or to the AIU to perform
12:46:54 17 the types of investigations that we spoke about at
12:46:56 18 length earlier today, correct?

12:46:58 19 A. Correct.

12:46:58 20 Q. What corrective actions did you take or
12:47:02 21 discipline did you impose against the officers who
12:47:05 22 did not report that incident as required by the
12:47:07 23 MOP?

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12:47:07 1 A. None.

12:47:12 2 Q. None at all?

12:47:13 3 A. Mm-hmm.

12:47:14 4 Q. Is that a yes?

12:47:15 5 A. That's a yes.

12:47:16 6 Q. To this day, you've done nothing?

12:47:18 7 A. I have not -- not -- no.

12:47:21 8 Q. Complete violation of police procedures

12:47:25 9 that you told me about earlier, isn't that right?

12:47:28 10 A. I wouldn't say it's complete violations.

12:47:43 11 Q. A moving SUV striking a pedestrian,

12:47:46 12 isn't it, Mr. Lockwood?

12:47:47 13 A. The pedestrian to me looked as if he

12:47:50 14 was approaching coming on the vehicle. They

12:47:52 15 stopped. That vehicle stopped as soon as it --

12:47:57 16 he -- he walked up. It may have hit him or

12:48:01 17 whatever, but he was also in motion too moving

12:48:05 18 towards that vehicle.

12:48:06 19 Q. That's right. Sometimes when vehicles

12:48:08 20 and pedestrians of vehicles collide they're both

12:48:10 21 moving, right, Mr. Lockwood?

12:48:11 22 A. Yes.

12:48:11 23 Q. Nothing you told me earlier when I was

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12:48:14 1 asking you in detail said that if the pedestrian is
12:48:16 2 also moving, that you don't have to report when a
12:48:19 3 police vehicle that's moving strikes him. Did you
12:48:21 4 ever tell me that?

12:48:22 5 **A.** No.

12:48:22 6 **Q.** Is there some exception in the police
12:48:26 7 manual that if the pedestrian is walking at the
12:48:28 8 time he's struck by a police SUV, that there's no
12:48:31 9 requirement to notify the lieutenant, the
12:48:33 10 investigation unit, or IAD?

12:48:34 11 **A.** IAD should have been notified.

12:48:38 12 **Q.** That's right. Because I want you to
12:48:40 13 watch it again. The vehicle is moving and
12:48:43 14 continues to move after Mr. Kistner falls to the
12:48:47 15 ground. Please watch it and tell me if you
12:48:51 16 disagree with that.

12:48:51 17 **MS. HUGGINS:** Form.

12:48:53 18 **BY MR. RUPP:**

12:48:53 19 **Q.** Strike it.

12:48:55 20 I want you to watch this, Mr. Lockwood, and
12:48:56 21 tell me if the vehicle continued to move forward
12:49:02 22 operated by Lauren McDermott after it made contact
12:49:06 23 with Mr. Kistner. Will you do that for me?

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12:49:09 1 A. Yes.

12:49:09 2 Q. Can you answer the question?

12:49:19 3 A. It -- they -- it stopped. From what

12:49:26 4 I'm looking at, when they -- they -- when the

12:49:31 5 impact happened, it stopped.

12:49:33 6 Q. All right.

12:49:33 7 A. The vehicle stopped.

12:49:34 8 Q. And I'm asking --

9 A. I mean --

12:49:35 10 Q. -- if after the impact happened before

12:49:36 11 it stopped, was there still some continued forward

12:49:40 12 motion. That's the critical question that I'm

12:49:43 13 asking you. Not if it eventually stopped.

12:49:45 14 Did it stop -- did it continue to move

12:49:49 15 forward after Mr. Kistner was initially contacted.

12:49:51 16 I want you to look at it again. Okay?

12:49:53 17 A. It stopped.

12:50:10 18 Q. After the initial contact, did it

12:50:12 19 continue to move forward a couple of feet before it

12:50:14 20 came to a stop, Mr. Lockwood?

12:50:16 21 A. I -- it looked like he -- whenever the

12:50:20 22 impact was, he went back. The vehicle maybe -- no,

12:50:27 23 it seemed -- it seemed like she hit the brakes and

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12:50:30 1 sometimes when you hit the brakes the vehicle will
12:50:32 2 jump when you hit the brakes.

12:50:33 3 Q. Jump forward?

12:50:34 4 A. Forward, yeah.

12:50:35 5 Q. All right. So how many feet did the
12:50:38 6 vehicle jump forward after the initial contact with
12:50:42 7 Mr. Kistner? And I'd ask you to watch it again.

12:50:44 8 MS. HUGGINS: Form. Based on this video?

12:50:51 9 BY MR. RUPP:

12:50:52 10 Q. Can you answer the question?

12:50:53 11 A. I go back to my -- looking at it again,
12:50:58 12 go back to my version. I believe -- I mean, I'm
12:51:01 13 looking at it when they -- when it hit, they
12:51:03 14 stopped. They stopped.

12:51:07 15 Q. Okay. But you do agree the SUV was in
12:51:10 16 motion, right?

12:51:10 17 A. The SUV was in -- when -- when they
12:51:13 18 collided, yes, it was -- when they collided it was
12:51:16 19 in motion.

12:51:17 20 Q. All right. So that's a police vehicle,
12:51:20 21 pedestrian accident at that point, isn't it?

12:51:21 22 A. Yes.

12:51:22 23 Q. Okay. And you're aware that not only

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12:51:27 1 did Lauren McDermott, the operator of that vehicle,
12:51:30 2 but all three of other officers who were present at
12:51:35 3 that time indicated that Mr. Kistner attacked the
12:51:37 4 SUV with the intention to hurt himself or hurt it
12:51:41 5 and he was charged with a felony for it. Are you
12:51:44 6 aware of that --

12:51:45 7 **MS. HUGGINS:** Form.

12:51:45 8 **BY MR. RUPP:**

12:51:45 9 **Q.** -- Mr. Lockwood?

12:51:47 10 Strike it. What's the form objection?

12:51:50 11 **MS. HUGGINS:** You said the word attacked.

12:51:52 12 **BY MR. RUPP:**

12:51:52 13 **Q.** Are you -- strike it.

12:51:53 14 Are you aware that all four officers said
12:51:55 15 that Mr. Kistner was the one who initiated the
12:51:59 16 contact with the police SUV?

12:52:01 17 **A.** Yes.

12:52:03 18 **Q.** And is that what's shown on that video,
12:52:06 19 Mr. Lockwood?

12:52:06 20 **A.** It looked like -- to me what I'm seeing
12:52:10 21 on the vehicle -- he walks up to the vehicle as the
12:52:13 22 vehicle's moving and --

12:52:15 23 **Q.** Did it look like he threw himself at

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12:52:18 1 the vehicle?

12:52:18 2 A. It's hard to -- you know, it's not --
12:52:27 3 it's hard to tell.

12:52:28 4 Q. It's hard for you to tell whether or
12:52:30 5 not Mr. Kistner deliberately threw himself at the
12:52:34 6 SUV from the video I just showed you, is that your
12:52:37 7 testimony, sir?

12:52:37 8 A. My testimony is that I don't think that
12:52:41 9 it was intentionally they hit him and them -- you
12:52:44 10 know, it's just -- they're saying he threw himself
12:52:49 11 in and I don't think they intentionally ran the guy
12:52:51 12 over.

12:52:51 13 Q. Okay. Mr. Lockwood, I don't know if
12:52:53 14 anybody is saying that they intentionally hit
12:52:57 15 Mr. Kistner. So let's just take that out.

12:53:00 16 Let's -- let's leave it at negligence. Did
12:53:02 17 the SUV hit Mr. Kistner, was it moving forward, did
12:53:04 18 it make contact with him?

12:53:06 19 A. The SUV was moving forward, yes.

12:53:09 20 Q. Okay. Did it make contact with
12:53:10 21 Mr. Kistner while it was moving forward?

12:53:12 22 A. Yes.

12:53:13 23 Q. And that would trigger all of the

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12:53:14 1 things you told me earlier about the need for the
12:53:17 2 actual investigators to come to the scene and
12:53:20 3 figure out what happened, right?

12:53:22 4 **A.** But you're leaving out this part too
12:53:24 5 that --

12:53:24 6 **Q.** Can you answer my question?

12:53:25 7 **A.** Yes.

12:53:25 8 **Q.** Okay. And none of that happened,
12:53:27 9 right?

12:53:27 10 **A.** No.

12:53:27 11 **Q.** And what happened instead was the four
12:53:30 12 officers at the scene said that Mr. Kistner threw
12:53:34 13 himself at the vehicle.

12:53:35 14 You know that because that's what you saw
12:53:38 15 when you reviewed the IAD file with
12:53:40 16 Lieutenant Kelly.

12:53:46 17 **MS. HUGGINS:** Form objection.

12:53:48 18 **BY MR. RUPP:**

12:53:48 19 **Q.** Mr. Lockwood, are you aware that that
12:53:50 20 is the allegation that they made against
12:53:53 21 Mr. Kistner and charged him with a felony, that he
12:53:56 22 threw himself at the SUV?

12:53:58 23 **A.** From the video -- from what I'm looking

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12:54:02 1 at the video -- video, he walked up on the
12:54:05 2 vehicle -- on --

12:54:05 3 Q. Not my question, Mr. Lockwood. I'm
12:54:07 4 asking you if you are aware that the officers
12:54:11 5 alleged that Mr. Kistner threw himself at the SUV?

12:54:15 6 A. I'm aware of that.

12:54:16 7 Q. Is that true from what you saw on that
12:54:21 8 video?

12:54:21 9 A. He walked up on the -- the vehicle.

12:54:23 10 Q. Did he throw himself at the -- at the
12:54:25 11 vehicle?

12:54:26 12 A. He put himself -- he walked himself up
12:54:30 13 on the vehicle --

14 Q. Did --

12:54:31 15 A. -- and that they was moving --

16 Q. Did he --

12:54:33 17 A. -- forward.

12:54:33 18 Q. -- commit a felony for criminal
12:54:37 19 mischief?

12:54:37 20 A. Well, I don't know what damage was done
12:54:40 21 to the vehicle.

12:54:41 22 Q. I'm not asking about the damage. Let's
12:54:44 23 assume is was \$250. We'll get there in a moment.

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12:54:46 1 Do you believe what you saw there was criminal
12:54:49 2 mischief on the part of Mr. Kistner?

12:54:51 3 **MS. HUGGINS:** Form.

12:54:54 4 **BY MR. RUPP:**

12:54:54 5 **Q.** Strike it.

12:54:55 6 Was that criminal mischief?

12:54:56 7 **A.** I look at it as an accident and it's
12:55:15 8 just -- it's hard to -- to say if he -- the vehicle
12:55:22 9 was moving, he was moving.

12:55:24 10 He could have thrown himself into the
12:55:27 11 vehicle. You know, it's just -- it's just hard.
12:55:29 12 It's hard to for me to sit here and look at this
12:55:33 13 video that's, you know, not good quality and just
12:55:36 14 say he threw him -- he didn't throw himself into
12:55:40 15 the vehicle.

12:55:40 16 **Q.** Well, Mr. Lockwood, you would agree
12:55:42 17 with me there's a big difference between an
12:55:45 18 accident which you just told me this was where a
12:55:48 19 police officer perhaps negligently strikes a
12:55:51 20 pedestrian and a pedestrian who gets charged with a
12:55:54 21 felony because of it. Those are two very different
12:55:58 22 things, aren't they?

12:55:58 23 **A.** Yes, I would -- yes.

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12:56:06 1 Q. I mean, it's not the policy or
12:56:07 2 procedure of the City of Buffalo Police Department
12:56:10 3 to charge people it hits with SUVs with felonies,
12:56:13 4 is it?

12:56:14 5 MS. HUGGINS: Form.

12:56:15 6 BY MR. RUPP:

12:56:16 7 Q. Let me ask you. Is it the policy of
12:56:20 8 the Buffalo Police Department to charge people it
12:56:22 9 hits with an SUV with felony -- with a felony?

12:56:27 10 A. If they believe that they intentionally
12:56:31 11 damaged the police vehicle, yes.

12:56:33 12 Q. And what if they're lying because they
12:56:35 13 don't want the accident investigated as an accident
12:56:38 14 and it's easier to blame the person they've hit and
12:56:43 15 accuse them of a felony than have all that
12:56:45 16 investigation happen at the scene?

12:56:47 17 MS. HUGGINS: Form.

12:56:48 18 BY MR. RUPP:

12:56:49 19 Q. Is that appropriate, Mr. Lockwood?

12:56:50 20 A. I -- I don't understand your question
12:56:57 21 on that last one.

12:56:58 22 Q. My question is if these officers
12:57:00 23 accused Mr. Kistner of a felony to prevent an

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12:57:04 1 accident investigation for Ms. McDermott's
12:57:07 2 negligence, that's not what the Buffalo Police
12:57:10 3 Department tells officers to do when they're
12:57:11 4 involved in a negligent accident, is it?

12:57:14 5 **A.** No, you're not supposed to do that.
12:57:16 6 No.

12:57:16 7 **Q.** All right. So you have four officers
12:57:18 8 claiming that Mr. Kistner committed a felony when
12:57:23 9 he was struck by the police SUV. Are you aware of
12:57:26 10 that?

12:57:27 11 **MS. HUGGINS:** Asked and answered. Form.

12:57:30 12 **THE WITNESS:** Yes.

12:57:30 13 **BY MR. RUPP:**

12:57:30 14 **Q.** Does -- does that cause you any concern
12:57:32 15 based on what you see in that video that all four
12:57:36 16 officers said that he threw himself at the police
12:57:39 17 SUV?

12:57:40 18 **A.** I see nothing in the vehicle -- I mean
12:57:43 19 that video that can say that he didn't throw
12:57:47 20 himself at the -- at that vehicle.

12:57:48 21 **Q.** Okay. So nothing in that video --

12:57:50 22 **A.** It's just --

12:57:51 23 **Q.** -- tells you that he didn't throw

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12:57:53 1 himself at the SUV? Even the fact that the SUV's
12:57:56 2 moving forward and continues to move forward after
12:57:58 3 he's struck?

12:57:59 4 **MS. HUGGINS:** Form.

12:58:00 5 **BY MR. RUPP:**

12:58:01 6 **Q.** You did tell me it continued to move
12:58:03 7 forward after it was struck, right?

8 **A.** I said when he hit the brakes.

12:58:05 9 **Q.** You said something about the brakes?

12:58:05 10 **A.** The brakes -- when you hit the
12:58:08 11 brakes -- any time you hit the brakes, the
12:58:10 12 vehicle's going to jump.

12:58:11 13 **Q.** Okay. So we know that it was moving
12:58:13 14 when it hit him and it continued to move after it
12:58:17 15 hit him, right?

12:58:20 16 **A.** After he hit -- after they hit him I'm
12:58:23 17 not going to -- no. No.

12:58:25 18 **Q.** Let's look at it again, Mr. Lockwood.
12:58:40 19 Could you tell whether it continued to move forward
12:58:42 20 after it contacted Mr. Kistner?

12:58:44 21 **A.** No, I can't tell.

12:58:45 22 **Q.** Still can't tell?

12:58:46 23 **A.** No.

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12:58:46 1 Q. Do you want to watch it again?

12:58:48 2 A. No.

12:58:48 3 Q. Okay. Now, are you aware that

12:58:58 4 Mr. Kistner asked for medical assistance at the

12:59:02 5 scene and the officers canceled the ambulance?

12:59:08 6 A. I read the file and yes, he did.

12:59:14 7 Q. And you are -- are you aware that the

12:59:16 8 officers at the scene canceled the ambulance

12:59:19 9 dispatched to the scene by Mr. Kistner's family

12:59:21 10 members?

12:59:21 11 A. Yes.

12:59:22 12 Q. Do you know why they did that?

12:59:24 13 A. No.

12:59:27 14 Q. Was that following the MOP,

12:59:31 15 Mr. Lockwood?

12:59:32 16 A. Yes, you can cancel and you can take

12:59:34 17 them.

12:59:35 18 Q. Did they take him right away?

12:59:37 19 A. I'm not sure if they took him right

12:59:41 20 away.

12:59:42 21 Q. Well, you watched the video, right?

12:59:44 22 A. I'm watching that right there, yes.

12:59:46 23 Q. Did you watch the rest of the videos

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12:59:48 1 that were produced by my office to the City of
12:59:50 2 Buffalo and the IAD?

12:59:52 3 **A.** No.

12:59:52 4 **Q.** Do you know how long it took your
12:59:56 5 officers, Mr. Lockwood, to take the man to the
12:59:59 6 hospital?

12:59:59 7 **A.** No.

13:00:01 8 **Q.** If I told you it was over a half an
13:00:04 9 hour before they even left the scene, would you
13:00:07 10 have reason to disagree with me?

13:00:09 11 **A.** No, I wouldn't disagree with you.

13:00:11 12 **Q.** Does that follow police procedures as
13:00:13 13 set forth in the MOP that you cancel an ambulance
13:00:17 14 and then don't get any treatment for the individual
13:00:19 15 for over 30 minutes before you decide to take him
13:00:22 16 to the hospital?

13:00:22 17 **MS. HUGGINS:** Form.

13:00:23 18 **BY MR. RUPP:**

13:00:24 19 **Q.** Strike it.

13:00:24 20 Does that follow police procedures to cancel
13:00:26 21 the ambulance and then delay taking the gentleman
13:00:29 22 to the hospital?

13:00:30 23 **A.** That happens. That happens.

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13:00:31 1 Q. Is that appropriate in your eyes?

13:00:33 2 A. It depends -- it all depends.

3 Q. Do you know --

13:00:35 4 A. Case by case.

13:00:36 5 Q. Do you know whether he was injured by

13:00:38 6 looking at that video?

13:00:39 7 A. No, I -- I -- he went back so I don't

13:00:50 8 know.

13:00:50 9 Q. He fell to the ground, right?

13:00:52 10 A. Yeah.

13:00:52 11 Q. Do you know whether he was injured?

13:00:54 12 A. He said he was injured.

13:00:56 13 Q. Okay. Do you know one way or the

13:00:58 14 other?

13:00:58 15 A. They took him to the hospital, yes.

13:01:01 16 Q. Well, not until they talked about it

13:01:04 17 for 30 minutes, right?

13:01:05 18 A. Well, I don't know if they talked about

13:01:09 19 it.

13:01:09 20 Q. Well, did you ever see them talking

13:01:11 21 about the incident in the middle of the street?

13:01:18 22 You see the officers at 0:01:45 of the video, do

13:01:22 23 you see four police officers standing on the right

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13:01:24 1 corner of the video?

13:01:26 2 **A.** Mm-hmm. Yes.

13:01:27 3 **Q.** Are those, to your knowledge, the four

13:01:29 4 officers that were the targets of the IAD

13:01:32 5 investigation that you reviewed with

13:01:34 6 Lieutenant Kelly on August -- in August of 2020?

13:01:40 7 **A.** This is my first time seeing that piece

13:01:46 8 so I -- it's hard for me to identify who's -- who

13:01:50 9 is who.

13:01:50 10 But I will say that they are -- the officers

13:01:53 11 that were responding is the four officers then.

13:01:57 12 **Q.** So -- so you -- your testimony is this

13:02:00 13 is the very first time you have seen the video

13:02:02 14 evidence of what happened on January 1, 2017,

13:02:06 15 despite the fact that one of your obligations as

13:02:08 16 police commissioner is to go over the IAD file with

13:02:11 17 the IAD investigator?

13:02:12 18 **MS. HUGGINS:** Form.

13:02:12 19 **THE WITNESS:** It's not -- I'm not saying

13:02:16 20 this is -- I saw the impact with the --

13:02:21 21 **BY MR. RUPP:**

13:02:21 22 **Q.** All right. Let's --

13:02:22 23 **A.** But as far as the -- them standing --

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13:02:27 1 the officers, the four officers over there standing
13:02:29 2 on the street, no, I -- I wouldn't --

13:02:31 3 Q. All right. Well, let's -- let's watch
13:02:33 4 this segment then. I'm going to -- I'm going to
13:02:35 5 rewind it to the beginning and ask you to take a
13:02:39 6 look.

13:02:39 7 We've already seen the first part where
13:02:42 8 Mr. Kistner's struck so I'll just run through that.
13:02:46 9 You see Mr. Kistner getting struck to the ground
13:02:49 10 there?

13:02:50 11 A. Mm-hmm.

13:02:53 12 THE REPORTER: Is that a yes?

13:02:54 13 THE WITNESS: Yes. I'm sorry.

13:02:54 14 THE REPORTER: That's okay.

13:02:54 15 BY MR. RUPP:

13:02:55 16 Q. Thank you, Andrea.

13:02:56 17 Do you see Mr. Kistner's son running up to
13:02:58 18 the scene with his cell phone out?

13:02:59 19 A. Yes.

13:03:00 20 Q. Are you aware that he called for an
13:03:03 21 ambulance for his father because his father was
13:03:05 22 asking for medical assistance?

13:03:07 23 A. I read that in the file, yes.

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13:03:10 1 Q. Do you see Officers Schultz and
13:03:12 2 Moriarity coming back from their SUV that's parked
13:03:16 3 out of the view of this camera screen?

13:03:18 4 A. Yes.

13:03:18 5 Q. Do you see Mr. Kistner's son walking
13:03:21 6 back towards his residence on Schmarbeck?

13:03:24 7 A. Yes.

13:03:24 8 Q. Do you see the four officers around
13:03:29 9 Mr. Kistner who ostensibly is still on the ground,
13:03:33 10 his -- his body blocked by the view of the SUV?

13:03:35 11 A. Yes.

13:03:36 12 Q. Do you know that Officer McDermott told
13:03:42 13 Mr. Kistner that if he did not get up he would be
13:03:44 14 arrested?

13:03:44 15 A. No.

13:03:44 16 Q. Would that be appropriate for an
13:03:47 17 officer to say that to a man who is lying on the
13:03:49 18 ground after being hit by an SUV and who is asking
13:03:52 19 for medical attention?

13:03:53 20 MS. HUGGINS: Form.

13:03:56 21 THE WITNESS: It wouldn't be appropriate,
13:03:57 22 no.

13:03:58 23 BY MR. RUPP:

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13:03:58 1 Q. Why would it not be appropriate?

13:04:00 2 A. You're -- you're there to assist the
13:04:02 3 individual.

13:04:02 4 Q. And how would they assist the
13:04:04 5 individual in keeping with the MOP manual?

13:04:06 6 A. You would see if there's any injuries
13:04:10 7 and if he's, you know, cooperating and telling you
13:04:15 8 if he's injured, then you would get immediate help
13:04:20 9 for him.

13:04:21 10 Q. Immediate. Not delaying a half an
13:04:23 11 hour, right?

13:04:24 12 MS. HUGGINS: Form.

13:04:24 13 BY MR. RUPP:

13:04:25 14 Q. What's immediate to you, Officer --
13:04:28 15 Mr. Lockwood?

13:04:28 16 A. You would notify right then. Get a --
13:04:32 17 you would need an ambulance there.

13:04:33 18 Q. Okay. And you know that they canceled
13:04:34 19 the ambulance that Mr. Kistner asked for, right,
13:04:38 20 you told me that earlier?

13:04:39 21 A. Yeah.

13:04:40 22 Q. Okay. Was that appropriate?

13:04:41 23 A. Under that situation in that case

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13:04:50 1 there, I think they, you know, did the right thing.

13:04:58 2 Q. They did the right thing by canceling
13:05:01 3 medical treatment for Mr. Kistner?

13:05:02 4 A. And taking him themselves to the
13:05:04 5 hospital.

13:05:05 6 Q. Okay. And what if they took him two
13:05:07 7 hours later, would that be appropriate?

13:05:07 8 MS. HUGGINS: Form.

13:05:09 9 THE WITNESS: No, not two hours --

13:05:10 10 BY MR. RUPP:

11 Q. What's the appropriate length of time
13:05:10 12 for them to delay and talk about it before they get
13:05:12 13 Mr. Kistner medical treatment, Mr. Lockwood?

13:05:14 14 A. It should be immediately.

13:05:21 15 Q. Okay. It didn't happen immediately,
13:05:22 16 did it?

13:05:23 17 A. I don't -- I'm -- I'm not sure how long
13:05:29 18 it took for them to get him to the hospital.

13:05:31 19 Q. You have access to all of the radio
13:05:34 20 dispatch records and those officers are under
13:05:37 21 instructions to notify dispatch whenever they
13:05:40 22 arrive and leave at a scene, right?

13:05:42 23 A. You -- yes, you notify radio that

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13:05:44 1 you're on your way to wherever your destination is

13:05:48 2 and when you --

13:05:48 3 Q. So if you wanted to, you could know as

13:05:51 4 soon as this deposition is over by looking at the

13:05:53 5 dispatch records when the incident happened and

13:05:56 6 then when they left for the hospital, right?

13:05:58 7 A. Yes.

13:05:58 8 Q. So you wouldn't have to take my word on

13:06:01 9 it if it's a half an hour, would you?

13:06:03 10 A. No.

13:06:17 11 Q. Okay. I want to show you what's been

13:06:19 12 marked Exhibit 24 for identification.

13:06:22 13 MS. HUGGINS: I do need a restroom break.

13:06:24 14 MR. RUPP: Sure.

13:06:35 15 MS. HUGGINS: Does that make sense to take

13:06:37 16 that now before we --

13:06:38 17 MR. RUPP: Sure.

18 MS. HUGGINS: Yeah?

13:06:38 19 MR. RUPP: Yeah, go ahead. Whatever you

13:06:39 20 need to do.

13:06:41 21 THE VIDEOGRAPHER: Okay. Going off the

13:06:43 22 record at 1306.

13:06:45 23 (A recess was then taken.)

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13:09:33 1 **THE VIDEOGRAPHER:** Sorry, one sec. Going
13:09:43 2 back on the record at 1309. Go ahead.

13:09:45 3 **BY MR. RUPP:**

13:09:46 4 **Q.** Mr. Lockwood, I'm showing you what's
13:09:48 5 been marked Exhibit 4A that was used with some of
13:09:51 6 the officers who were involved in the incident with
13:09:54 7 Mr. Kistner.

13:09:54 8 I just want to bring a couple of times --
13:09:56 9 timestamps on the dispatch records to your
13:09:59 10 attention.

13:10:00 11 Do you see at 10:55:42 there's a reference
13:10:04 12 to male hit by police car? Do you see that?

13:10:10 13 **A.** Yes.

13:10:10 14 **Q.** And what does it say after that, ADJ?

13:10:13 15 **A.** ADI.

16 **Q.** ADI. What is that?

13:10:17 17 **A.** ADI, that's the ambulance.

13:10:18 18 **Q.** That's the ambulance?

13:10:19 19 **A.** Yeah, that's --

20 **Q.** All right.

13:10:19 21 **A.** -- the -- the ambulance.

13:10:19 22 **Q.** All right. And what is that north --
13:10:21 23 what is that NTFD?

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13:10:22 1 A. I'm not sure what that is.

13:10:24 2 Q. Is that the ambulance company?

13:10:25 3 A. I'm not sure.

13:10:26 4 Q. Okay. And then 14 seconds later the

13:10:31 5 call type is changed to accident injury, right?

13:10:34 6 A. Yes.

13:10:35 7 Q. Okay. And that's just a nomenclature

13:10:40 8 that's used by dispatch to put the right label on

13:10:44 9 the -- on the report, right?

13:10:45 10 A. Yes.

13:10:45 11 Q. Okay. Now, I just want to take you

13:10:48 12 down to the entry for 11:22:34. Do you see that?

13:10:55 13 A. 11:22:34, yes.

13:10:58 14 Q. All right. And officer C230 has

13:11:03 15 location change on route to ECMC; is that right?

13:11:06 16 A. Yes.

13:11:06 17 Q. Okay. And if we subtract the one

13:11:10 18 number from the other, we are about 27, 28 minutes

13:11:15 19 on scene after not the collision, but after it's

13:11:21 20 radioed in before the officers even leave with

13:11:26 21 Mr. Kistner for ECMC according to official Buffalo

13:11:29 22 Police records, right?

13:11:30 23 A. Okay. Where are you at now?

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13:11:34 1 Q. Well, the same ones I just showed you.

13:11:38 2 10:55:42 male hit by police car --

13:11:44 3 A. Right.

13:11:44 4 Q. -- right?

13:11:45 5 A. Yes.

13:11:45 6 Q. I mean, there's actually a reference at
13:11:49 7 10:54:42 that the entry was initiated for a new
13:11:54 8 issue and then a minute later they call it somebody
13:11:57 9 hit by a police car, right?

13:11:59 10 A. Yes.

13:12:05 11 Q. Okay. So the officers at the scene
13:12:06 12 radio this into dispatch, dispatch describes the
13:12:10 13 incident and puts a label on it, right?

13:12:11 14 A. Yes.

13:12:11 15 Q. All right. Now, there's some other
13:12:15 16 information about other people being dispatched to
13:12:18 17 the scene, et cetera.

13:12:19 18 But down at 11:22:34, three officers make a
13:12:28 19 location change saying that they're on route to
13:12:31 20 ECMC. Do you see that?

13:12:32 21 A. Yes.

13:12:32 22 Q. And that follows protocol. When they
13:12:36 23 leave an incident to which -- an incident scene

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13:12:38 1 where they've been dispatched and they head
13:12:41 2 somewhere else, they radio in and say where they're
13:12:43 3 going, right?

13:12:44 4 **A.** Yes.

13:12:44 5 **Q.** All right. And if we subtract the one
13:12:47 6 number from the other, we're at 27 or 28 minutes
13:12:52 7 between the time the accident happens or at least
13:12:54 8 it's reported and the time that they leave with
13:12:57 9 Mr. Kistner to get him medical treatment, right?

13:13:00 10 **A.** Yes.

13:13:00 11 **Q.** Is that appropriate that they canceled
13:13:03 12 the ambulance that his son had called for him at
13:13:07 13 his request and then waited 27 or 28 minutes to get
13:13:12 14 him medical attention?

13:13:14 15 **MS. HUGGINS:** Form.

13:13:14 16 **BY MR. RUPP:**

13:13:15 17 **Q.** Is that delay appropriate, Mr. Lockwood?

13:13:16 18 **A.** No.

13:13:20 19 **Q.** Are your officers EMTs?

13:13:24 20 **A.** We do have some officers that have
13:13:29 21 worked --

13:13:29 22 **Q.** Are any of the four officers who were
13:13:32 23 the target of the IAD investigation EMTs, to your

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13:13:35 1 knowledge?

13:13:35 2 **A.** Not to my knowledge.

13:13:36 3 **Q.** Do they know whether Mr. Kistner
13:13:38 4 sustained any internal injuries after being struck
13:13:41 5 by Ms. McDermott's SUV?

13:13:43 6 **MS. HUGGINS:** Form.

13:13:45 7 **BY MR. RUPP:**

13:13:45 8 **Q.** Do you have any reason to believe that
13:13:47 9 they knew one way or the other whether he had
13:13:50 10 suffered any internal injuries?

13:13:51 11 **A.** No, I have no way of knowing.

13:13:52 12 **Q.** All right. So the better procedure
13:13:54 13 would be for them to take him immediately to the
13:13:57 14 hospital, right?

13:13:58 15 **A.** Yes, take him to -- yes, take him to
13:14:05 16 the hospital.

13:14:05 17 **Q.** In fact, the better procedure would be
13:14:08 18 to allow the ambulance to come in as his son had
13:14:11 19 called it and let the ambulance take him to the
13:14:13 20 hospital, right?

13:14:13 21 **MS. HUGGINS:** Form.

13:14:15 22 **BY MR. RUPP:**

13:14:16 23 **Q.** Would that be an appropriate thing to

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13:14:17 1 do is let an ambulance take a man who's been struck
13:14:20 2 by an SUV to the hospital?

13:14:22 3 A. That would be the appropriate thing to
13:14:23 4 do.

13:14:23 5 Q. Okay. And -- and neither of those
13:14:25 6 things happened, the ambulance didn't happen and an
13:14:28 7 immediate transport didn't happen, correct?

13:14:30 8 A. Correct.

13:14:30 9 Q. So what did you do, Mr. Lockwood, when
13:14:34 10 you reviewed the video and you reviewed the IAD
13:14:41 11 investigation report when you saw that these four
13:14:43 12 officers did not do either of those two things?

13:14:44 13 A. In my report I saw that they took him
13:14:51 14 to the hospital. Mr. Kistner could have -- I'm not
13:14:55 15 saying he did, but he could have said that he
13:14:58 16 didn't want to go in an ambulance.

13:15:00 17 Q. Okay. But you have no indication --

13:15:01 18 A. Right.

13:15:01 19 Q. -- that he said that?

13:15:02 20 A. I -- right, I have no idea of that.
13:15:03 21 And I have no idea the reason why they canceled the
13:15:08 22 ambulance. They --

23 Q. Well --

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13:15:10 1 **A.** All I knew is they canceled it.

13:15:12 2 **Q.** -- is one reason that they canceled the
13:15:15 3 ambulance was they wanted to get their story
13:15:17 4 straight about Mr. Kistner attacking the SUV?

13:15:20 5 **MS. HUGGINS:** Form. He's not going to
13:15:21 6 answer the question in that form.

13:15:22 7 **BY MR. RUPP:**

13:15:23 8 **Q.** All right. Well, is it possible,
13:15:25 9 Mr. Lockwood, that they did not want this to be
13:15:27 10 listed as an accident with Ms. McDermott
13:15:30 11 negligently operating the SUV?

13:15:32 12 **MS. HUGGINS:** Same form objection.

13:15:34 13 **BY MR. RUPP:**

13:15:34 14 **Q.** You can answer.

13:15:42 15 **A.** I don't think they would, no. No, I --
13:15:42 16 I don't think they did that.

13:15:44 17 **Q.** So you see a man who committed a felony
13:15:46 18 and threw himself at an SUV deliberately, you don't
13:15:51 19 see police officers covering up an accident?

13:15:54 20 **A.** No.

13:15:54 21 **MS. HUGGINS:** Form.

13:15:55 22 **BY MR. RUPP:**

13:15:55 23 **Q.** Okay. Let's continue to watch the

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13:15:58 1 video. Now, do you see Mr. Kistner on his feet
13:16:11 2 handcuffed and being walked down the street
13:16:15 3 Schmarbeck by three officers?

13:16:18 4 **A.** Yes.

13:16:20 5 **Q.** I can rewind it if you want. Do you
13:16:29 6 see Mr. Kistner's son reappearing at the bottom of
13:16:29 7 the screen?

13:16:29 8 **A.** Yes.

13:16:29 9 **Q.** See the officers taking note of
13:16:38 10 Mr. Kistner's son and approaching him?

13:16:41 11 **A.** Yes.

13:16:42 12 **Q.** See Mr. Kistner's son walking away and
13:16:46 13 the officer pursuing?

13:16:48 14 **MS. HUGGINS:** Form.

13:16:52 15 **BY MR. RUPP:**

13:16:52 16 **Q.** Do you see Mr. Kistner's son being
13:16:54 17 brought back forcibly by the officers to the center
13:16:57 18 of the street?

13:16:57 19 **MS. HUGGINS:** Form.

13:17:00 20 **BY MR. RUPP:**

13:17:01 21 **Q.** Mr. Lockwood, the rules of the
13:17:02 22 deposition are you can answer questions even if
13:17:05 23 Ms. Huggins is interposing form objections. Okay?

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13:17:09 1 So I'd ask you to answer my questions. Do
13:17:12 2 you see the officer approaching Mr. Kistner's son?

13:17:14 3 A. I see him approaching, yes.

13:17:16 4 Q. Okay. Do you see Mr. Kistner's son
13:17:18 5 walking away?

13:17:18 6 A. Yes.

13:17:19 7 Q. Do you see the officer continuing to
13:17:21 8 follow Mr. Kistner's son?

13:17:23 9 A. They're out of the picture. I don't
13:17:25 10 know what's going on right now.

13:17:26 11 Q. Well, let's go back and see if you can
13:17:29 12 see him following him out of the picture. Did you
13:17:39 13 see him follow him out of the picture?

13:17:41 14 A. Yes.

13:17:41 15 Q. All right. Now watch that same area
13:17:43 16 and see if Mr. Kistner's son is in fact brought
13:17:46 17 back with an officer holding his arm. Do you see
13:17:53 18 that?

13:17:53 19 A. Yes.

13:17:54 20 Q. Is the officer holding his arm?

13:17:56 21 A. Mm-hmm. Yes.

13:17:57 22 Q. Is that a yes?

13:17:58 23 A. Yes, yes.

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13:17:59 1 Q. Okay. Do you see all four officers now
13:18:01 2 with Mr. Kistner's son?

13:18:02 3 A. Yes.

13:18:02 4 Q. Do you know where Mr. Kistner,
13:18:05 5 James Kistner, is at this point?

13:18:06 6 A. No.

13:18:06 7 Q. If I told you that he was handcuffed in
13:18:08 8 the back of the Moriarity, Schultz SUV, would you
13:18:12 9 have any reason to disagree with me?

13:18:14 10 A. I -- I only can say what I see. I
13:18:27 11 don't know where Mr. Kistner's at at this
13:18:30 12 particular time.

13:18:30 13 Q. Well --

13:18:31 14 A. I -- they took him out of the picture.

13:18:33 15 Q. In handcuffs, right?

13:18:35 16 A. Yeah, out of the picture in handcuffs.
13:18:38 17 I don't know if he could be standing there or what.
13:18:40 18 I -- I have no idea.

13:18:40 19 Q. Okay. Let's look at what happens to
13:18:43 20 Mr. Kistner's son. Do you see Mr. Kistner's son
13:18:55 21 being touched by the officer?

13:18:57 22 A. Yes.

13:18:58 23 Q. Do you know why the officers were

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13:19:04 1 touching and restraining Mr. Kistner's son?

13:19:08 2 **A.** No.

13:19:08 3 **Q.** Do you know if they confiscated his
13:19:16 4 cell phone?

13:19:17 5 **A.** No.

13:19:17 6 **Q.** As we're watching this, Mr. Lockwood,
13:19:47 7 do you know why the officers are not transporting
13:19:49 8 Mr. Kistner to ECMC?

13:19:51 9 **A.** No.

13:19:51 10 **Q.** Do you know what they're talking about?

13:19:53 11 **A.** No.

13:19:53 12 **Q.** Do officers for the City of Buffalo
13:20:24 13 Police Department, Mr. Lockwood, use their cell
13:20:25 14 phones to communicate with each other when they
13:20:27 15 don't want something to go over radio dispatch?

13:20:29 16 **MS. HUGGINS:** Form.

13:20:32 17 **THE WITNESS:** I can't say a reason why they
13:20:40 18 was using their cell phones. I can't.

13:20:42 19 **BY MR. RUPP:**

13:20:42 20 **Q.** Do you know if officers call each other
13:20:44 21 while they're on-duty?

13:20:46 22 **A.** I -- yes.

13:20:48 23 **Q.** All right. That's the end of that

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13:21:02 1 segment, Mr. Lockwood. And just to make sure you
13:21:06 2 see them all, I'm going to play the next one.

13:21:20 3 Now, the video that you just saw,
13:21:24 4 Mr. Lockwood, had you ever seen that in its
13:21:27 5 entirety before? Had you ever seen that before in
13:21:39 6 its entirety?

13:21:40 7 **A.** In its entirety, no.

13:21:42 8 **Q.** All right. Now I'm going to show you
13:21:44 9 the fourth listed segment and I'm going to -- I'll
13:21:47 10 go back actually.

13:21:48 11 The one I just played for you has a suffix
13:21:52 12 of 02529 on the file number and it's the third
13:21:58 13 listed item on the screen.

13:22:01 14 The one I'm going to show you now has a
13:22:04 15 suffix of 05233. It's the fourth listed item on
13:22:09 16 the DVD and on the screen. I'm going to play that
13:22:12 17 one for you and ask you to take a look.

13:23:22 18 This is from a different camera angle,
13:23:25 19 Mr. Lockwood. Do you see it's from a slightly
13:23:28 20 different perspective?

13:23:29 21 **A.** Yes.

13:23:29 22 **Q.** Do you see that the officers now in the
13:23:33 23 street, there are five of them?

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13:23:39 1 **A.** Yes.

13:23:40 2 **Q.** Okay. Do you know who the fifth
13:23:42 3 officer is and why the fifth officer went to the
13:23:44 4 scene?

13:23:47 5 **MS. HUGGINS:** Form. Can we just break those
13:23:50 6 two questions into two different ones?

13:23:51 7 **BY MR. RUPP:**

13:23:52 8 **Q.** Do you know who the fifth officer is?

13:23:54 9 **A.** Not offhand, no.

13:23:55 10 **Q.** Okay.

13:23:56 11 **A.** I can't identify him.

13:23:57 12 **Q.** Do you know why that officer went to
13:23:59 13 the scene?

13:23:59 14 **A.** No.

13:23:59 15 **Q.** All right. If I told you it was
13:24:01 16 Officer Santana from C district, would you have any
13:24:05 17 reason to disagree with me?

13:24:06 18 **A.** I don't remember seeing Santana's name
13:24:13 19 in the file, but no, I wouldn't disagree with you.

13:24:15 20 **Q.** Do you know an Officer Santana in C
13:24:17 21 district?

13:24:17 22 **A.** No.

13:24:18 23 **Q.** Okay. Let's continue to watch. Now,

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13:24:21 1 do you know why the five officers are having a
13:24:25 2 conference in the middle of Schmarbeck Avenue?

13:24:28 3 **A.** No.

13:24:28 4 **Q.** Do you know what they're talking about?

13:24:30 5 **A.** No.

13:24:30 6 **Q.** Did the IAD investigator tell you what
13:24:35 7 they said they were talking about?

13:24:36 8 **A.** No.

13:24:36 9 **Q.** Do you know why these officers are not
13:25:32 10 transporting Mr. Kistner to the hospital,
13:25:35 11 Mr. Lockwood?

13:25:36 12 **A.** No.

13:25:37 13 **Q.** Does what you see here, Mr. Lockwood,
13:26:08 14 with these five officers talking in the middle of
13:26:10 15 the street, follow police protocol as set forth in
13:26:14 16 the MOP?

13:26:15 17 **MS. HUGGINS:** Form.

13:26:18 18 **THE WITNESS:** Depends on what they were
13:26:20 19 talking about.

13:26:21 20 **BY MR. RUPP:**

13:26:22 21 **Q.** What would be an appropriate thing that
13:26:23 22 they could be talking about in the middle of the
13:26:25 23 street?

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13:26:25 1 **A.** I don't know, but it could have been
13:26:28 2 police business. I -- I can't really say what
13:26:32 3 was -- you know, what they -- what they were
13:26:33 4 talking about at that particular time.

13:26:42 5 **Q.** Do you see the fifth officer's sedan, I
13:26:46 6 believe, parked on Schmarbeck behind the first SUV
13:26:49 7 that was operated by Ms. McDermott?

13:26:54 8 **A.** Yeah, the vehicle. Yeah, the --

13:26:55 9 **Q.** That's the -- the third different City
13:26:58 10 of Buffalo Police Department vehicle that was
13:26:58 11 present for this call, right?

13:27:02 12 **MS. HUGGINS:** Form.

13:27:03 13 **BY MR. RUPP:**

13:27:03 14 **Q.** It's the third police vehicle on the
13:27:05 15 street set forth in these videos, right?

13:27:08 16 **A.** Yes.

13:27:08 17 **Q.** I'm going to show you now the video
13:27:33 18 that was disclosed to the City of Buffalo 095252,
13:27:39 19 it's the first one shown.

13:29:49 20 All right. And finally, Mr. Lockwood, I'm
13:29:51 21 going to show you the fourth and final video which
13:29:56 22 has a suffix of 01342. It's the second listed
13:30:01 23 video.

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13:31:35 1 Now, Mr. Lockwood, do you see now the second
13:31:39 2 SUV pulling up?

13:31:41 3 **A.** Yes.

13:31:41 4 **Q.** And you recognize that as the SUV
13:31:45 5 operated by Moriarity with Schultz as the
13:31:48 6 passenger?

13:31:49 7 **MS. HUGGINS:** Form.

8 **BY MR. RUPP:**

13:31:55 9 **Q.** You can answer.

13:31:56 10 **MS. HUGGINS:** Could you just repeat the
13:31:57 11 question?

12 (The above-requested question was then read
13:32:06 13 by the reporter.)

13:32:06 14 **MS. HUGGINS:** I'm sorry, are you referring
13:32:07 15 to the -- the SUV that has just pulled up just now?

13:32:10 16 **MR. RUPP:** Yeah, the second SUV. There was
13:32:13 17 already one. We can go back if you want.

13:32:14 18 **MS. HUGGINS:** Yeah, I -- I think you're
13:32:15 19 just -- I think you may have just mistaken officer
13:32:18 20 names yourself in your question.

21 **BY MR. RUPP:**

13:32:22 22 **Q.** Okay. Maybe I did. All right. So
13:32:24 23 this SUV that's parked there, the only one that's

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13:32:27 1 depicted in the -- the film, that is the one in the
13:32:30 2 middle of the street is Moriarity and Schultz.

13:32:33 3 Do you have any reason to disagree with
13:32:35 4 that? We've established that from their prior
13:32:39 5 testimony.

13:32:40 6 A. No, I wouldn't disagree with it.

13:32:41 7 Q. Have you reviewed any of the testimony
13:32:43 8 in this case?

13:32:44 9 A. Yes, I looked at some testimony. Yeah.

13:32:45 10 Q. When did you look at it?

13:32:47 11 A. I looked at it back in August and I
13:32:52 12 looked at it again over the weekend.

13:32:57 13 Q. So did you watch the testimony, the
13:33:02 14 video testimony of Lauren McDermott?

13:33:04 15 A. Did I watch the video?

13:33:06 16 Q. Yeah.

13:33:06 17 A. No.

13:33:06 18 Q. You just read the transcript?

13:33:08 19 A. Read, yeah.

13:33:09 20 Q. Okay. So you knew that this vehicle
13:33:11 21 had Schultz and Moriarity in it from what you read,
13:33:15 22 right?

13:33:15 23 A. Yes.

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13:33:15 1 Q. Okay. And you knew that the SUV that's
13:33:20 2 pulling up now has McDermott at the wheel with
13:33:23 3 Jenny Velez as passenger, right?

13:33:27 4 A. Yes.

13:33:27 5 Q. All right. Mr. Lockwood, and for the
13:34:17 6 sake of completeness, I'm going to show you the
13:34:21 7 fifth and final video so you will have seen all of
13:34:23 8 them. This one is -- was marked as Exhibit 12 so
13:34:28 9 I'm going to switch DVDs.

13:34:58 10 All right. This video has a different
13:35:00 11 nomenclature. It's named -- its file name is
13:35:03 12 footage two Emerson. And in the bottom right-hand
13:35:16 13 corner you see it's a reference to camera two?

13:35:18 14 A. Yes.

13:35:18 15 Q. And did you see camera six in one of
13:35:21 16 the last videos we looked at?

13:35:23 17 A. Yes.

13:35:23 18 Q. So you're aware these are different
13:35:25 19 cameras -- different surveillance cameras, right?

13:35:26 20 A. Yes.

13:35:26 21 Q. Did you understand that they were on
13:35:28 22 Mr. Kistner's house --

13:35:29 23 A. No.

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13:35:29 1 Q. -- at 37 Schmarbeck?

13:35:31 2 A. No.

13:35:31 3 Q. Okay. I'm going to ask you to pay

13:35:40 4 particular attention to what happens to

13:35:42 5 Mr. Kistner's son in this video. Okay? I'm going

13:35:45 6 to ask you some questions about that.

13:35:49 7 A. Okay.

13:36:15 8 Q. Do you see Mr. Kistner's son who just

13:36:17 9 appeared in the left-hand --

13:36:18 10 A. Yes.

13:36:18 11 Q. -- part of the screen? He'll be back

13:36:21 12 on the screen in a moment. All right. Do you see

13:36:23 13 what we saw from a prior camera angle, the officers

13:36:26 14 walking Mr. Kistner, James Kistner, back to the

13:36:29 15 Moriarity, Schultz SUV?

13:36:31 16 A. Yes.

13:36:31 17 Q. Okay. I'm going to ask you to take a

13:36:33 18 look and see if you can tell whether they put him

13:36:35 19 in the back of that SUV as I asked you earlier.

13:36:45 20 Could you tell whether they put him in the

13:36:46 21 back?

13:36:46 22 A. Yes.

13:36:47 23 Q. Okay. He is in the back of the SUV?

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13:36:48 1 **A.** Yes.

13:36:49 2 **Q.** Okay. Now, do you see the officers now
13:36:52 3 approaching Mr. Kistner's son?

13:36:53 4 **A.** Yes.

13:36:54 5 **Q.** Do you see the officer take him by the
13:36:57 6 arm, pull him back? Mr. Kistner's son appeared to
13:37:04 7 be on the telephone, did you see that?

13:37:06 8 **A.** Yes.

13:37:07 9 **Q.** Okay. And do you know why they
13:37:11 10 physically touched Mr. Kistner's son?

13:37:13 11 **A.** No.

13:37:13 12 **Q.** Had he committed a crime?

13:37:15 13 **A.** No.

13:37:16 14 **MS. HUGGINS:** Form.

13:37:16 15 **BY MR. RUPP:**

13:37:17 16 **Q.** Do you know whether they had probable
13:37:19 17 cause to touch him for any reason?

13:37:21 18 **A.** No.

13:37:25 19 **Q.** Are you aware that Mr. Kistner's son
13:37:28 20 has commenced a Notice of Claim against the City of
13:37:30 21 Buffalo for his treatment on the day of the
13:37:32 22 incident?

13:37:32 23 **A.** I'm not familiar with that one, no.

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13:37:34 1 Q. What are the officers doing here to
13:37:42 2 Mr. Kistner's son? I'll rewind it for you so you
13:37:47 3 can see it again. What are the officers doing
13:38:04 4 there to Mr. Kistner's son, Mr. Lockwood?

13:38:07 5 A. Looked like they was checking him at
13:38:09 6 one time.

13:38:09 7 Q. Why are they pushing him back and forth
13:38:12 8 between them?

13:38:12 9 MS. HUGGINS: Form.

13:38:13 10 BY MR. RUPP:

13:38:14 11 Q. Why are they touching him?

13:38:15 12 MS. HUGGINS: Same form objection.

13:38:17 13 BY MR. RUPP:

13:38:18 14 Q. Do you know why they're touching him?

13:38:19 15 A. No.

13:38:19 16 Q. Do you know why they're pushing him
13:38:21 17 back and forth between themselves?

13:38:22 18 A. No.

13:38:22 19 Q. Does that follow police procedures?

13:38:25 20 A. In this case right here, I -- I don't
13:38:32 21 know why they doing that.

13:38:36 22 Q. That wouldn't follow any procedures
13:38:39 23 that are set forth in the MOP, would it, to push

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13:38:41 1 him back and forth like that?

13:38:42 2 **MS. HUGGINS:** Form.

13:38:43 3 **BY MR. RUPP:**

13:38:43 4 **Q.** Would it? Let me ask it this way since
13:38:46 5 there's a form objection, Mr. Lockwood.

13:38:47 6 Do you know of any procedures in the MOP
13:38:49 7 that say that's appropriate?

13:38:51 8 **A.** No.

13:38:56 9 **Q.** Would that be a violation of the MOP
13:38:58 10 then?

13:38:59 11 **A.** I wouldn't say a violation. It was
13:39:09 12 inappropriate, though.

13:39:10 13 **Q.** Your officers aren't supposed to rough
13:39:11 14 people up like that, are they?

13:39:13 15 **MS. HUGGINS:** Form.

13:39:14 16 **BY MR. RUPP:**

13:39:14 17 **Q.** Are your officers supposed to do that,
13:39:16 18 Mr. Lockwood? You're the chief disciplinarian of
13:39:20 19 the Buffalo Police Department. Are they supposed
13:39:21 20 to do that?

13:39:22 21 **A.** I'm not going to say they roughed him
13:39:24 22 up, but no, they shouldn't have.

13:39:27 23 **Q.** Use your own words. What did they do

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13:39:29 1 to him?

13:39:30 2 **A.** I -- they -- to me they were checking
13:39:33 3 him for some reason. I don't know.

13:39:35 4 **Q.** Well, the -- when the -- I'm talking
13:39:38 5 about the pulling him back and forth -- two
13:39:41 6 officers, one on each arm, pulling him back and
13:39:45 7 forth. Why did they do that?

13:39:49 8 **MS. HUGGINS:** Form.

13:39:51 9 **THE WITNESS:** I don't know.

13:39:51 10 **BY MR. RUPP:**

13:39:53 11 **Q.** Did you ask when you saw the video?

13:39:55 12 **A.** I'm just seeing the video.

13:39:57 13 **Q.** You didn't see this one before?

13:39:59 14 **A.** No.

13:39:59 15 **Q.** IAD didn't bring this one to your
13:40:01 16 attention?

13:40:01 17 **A.** No.

13:40:15 18 **Q.** Do you know if they took away his cell
13:40:18 19 phone?

13:40:18 20 **A.** No.

13:40:19 21 **Q.** If they did, is that appropriate?

13:40:21 22 **A.** No, you can't take no one's cell phone.

13:40:29 23 **Q.** Why not?

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13:40:30 1 **A.** If it's -- if it's not used in a crime.

13:40:33 2 If it's used in the crime, then yes.

13:40:35 3 **Q.** Did you see any crimes committed by
13:40:38 4 Mr. Kistner's son?

13:40:39 5 **A.** No.

13:40:39 6 **Q.** Do you understand that he was the one
13:40:41 7 who was using his cell phone to try to get an
13:40:42 8 ambulance to help his father?

13:40:44 9 **MS. HUGGINS:** Form.

13:40:44 10 **THE WITNESS:** No.

13:40:44 11 **BY MR. RUPP:**

13:40:44 12 **Q.** Do you know one way or the other
13:40:46 13 whether he called for an ambulance, called 911 and
13:40:48 14 asked for an ambulance to go to the scene, at the
13:40:51 15 request of his father?

13:40:52 16 **A.** I think I read it right here on the 911
13:40:57 17 report here.

13:40:58 18 **Q.** And you also read that the officers at
13:41:00 19 the scene canceled the ambulance?

13:41:02 20 **A.** Yes.

13:41:02 21 **Q.** And then canceled any other calls made
13:41:04 22 by anyone else for an ambulance to be dispatched to
13:41:07 23 the vicinity of 37 Schmarbeck, are you aware of

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13:41:12 1 that?

13:41:12 2 **A.** No, I'm not aware that they canceled
13:41:14 3 any other calls. No.

13:41:15 4 **Q.** Okay. Can you tell from the dispatch
13:41:17 5 records that you see there whether they in fact did
13:41:20 6 that?

13:41:32 7 Let me ask you this, Mr. Lockwood, because
13:41:33 8 it may not be there. Did you review the testimony
13:41:36 9 of Officer Schultz that he contacted dispatch and
13:41:40 10 said do not allow any ambulances to be dispatched
13:41:44 11 to 37 Schmarbeck?

13:41:45 12 **A.** I don't -- no, I -- I can't remember
13:41:52 13 reading that in his testimony.

13:41:54 14 **Q.** Okay. Did you read that in anybody's
13:41:57 15 testimony that they not only canceled the ambulance
13:41:59 16 that Mr. Kistner's son called, but just in case his
13:42:01 17 wife or anybody else called, they canceled those
13:42:04 18 too?

13:42:05 19 **A.** No, I didn't read that.

13:42:06 20 **Q.** Okay. Would that be appropriate if
13:42:07 21 they did that?

13:42:08 22 **A.** If they did that, no, that wouldn't be
13:42:11 23 appropriate.

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13:42:11 1 Q. Okay. So now, you said that it would
13:42:13 2 not be appropriate to take somebody's cell phone
13:42:15 3 unless they committed a crime, did you see any
13:42:29 4 crimes committed by Mr. Kistner's son?

13:42:32 5 A. No.

13:42:33 6 Q. Okay. Do you have any probable cause
13:42:36 7 to believe that he committed a crime using his cell
13:42:39 8 phone at the scene of the incident involving his
13:42:41 9 father that day?

13:42:41 10 A. No.

13:42:42 11 Q. All right. So if they did take his
13:42:44 12 cell phone, do you know why they would have done
13:42:46 13 that?

13:42:46 14 A. No.

13:42:46 15 Q. And would that have followed the MOP?

13:42:50 16 A. No.

13:42:51 17 Q. And would that be something that if you
13:42:55 18 had known about it on August 20th, might have
13:42:57 19 resulted in discipline for these officers?

13:43:00 20 A. It would definitely result in a
13:43:02 21 conference with them.

13:43:03 22 Q. What's going to happen now that you
13:43:05 23 know about it from this deposition?

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13:43:06 1 **MS. HUGGINS:** Form.

13:43:07 2 **BY MR. RUPP:**

13:43:07 3 **Q.** You can answer.

13:43:09 4 **A.** I have to go back and look at the file.

13:43:19 5 **Q.** What do you need to --

6 **A.** I mean, I --

13:43:20 7 **Q.** -- look at from the file?

13:43:21 8 **A.** I need to go back and read the file.

13:43:23 9 I'm hearing what you're -- what you're saying, but

13:43:25 10 I need to read the file and see what the reason,

13:43:27 11 you know, was to take the cell phone.

13:43:30 12 **Q.** All right. And you're going to look

13:43:33 13 into the reason why Mr. Kistner was -- I don't know

13:43:37 14 what -- did we ever put a word on it that was

13:43:40 15 acceptable to you?

13:43:41 16 What -- what -- what happened to him when

13:43:42 17 the two officers grabbed him and brought him back

13:43:43 18 to the middle of the street, what would you say

13:43:46 19 happened to him here?

13:43:47 20 And I'm talking about right here at 1:41,

13:43:57 21 what's happening to him there? What's the word you

13:44:01 22 would choose?

13:44:02 23 **A.** My word would -- I mean, I would choose

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13:44:07 1 that they were searching him. I don't know if he
13:44:09 2 was pulling away and the other officer grabbed him
13:44:11 3 to, you know -- I don't know what his -- was he
13:44:14 4 pulling away too. He could have been pulling away.
13:44:19 5 I mean, it does -- okay. They're going --

13:44:26 6 Q. Does what, Mr. Lockwood?

13:44:27 7 A. No, continue to roll it. Let it roll.
13:44:31 8 They're searching. Okay.

13:44:31 9 Q. Does it look like he's pulling away?
13:44:36 10 I'll rewind it for you again. You tell me if you
13:44:39 11 see him pulling away.

13:44:41 12 A. Okay. Right there. He -- he put his
13:44:44 13 hands up. His hands -- you know, I mean --

13:44:45 14 Q. He put his hands up to prevent himself
13:44:47 15 from falling?

13:44:48 16 A. No. I'm just saying, though. I -- he
13:44:50 17 put his hands up and they may have grabbed him
13:44:54 18 then, you know. I don't know what the reason why
13:44:56 19 they, you know, grabbed him.

13:44:56 20 Q. Does this look appropriate to you,
13:44:58 21 Mr. Lockwood?

13:44:59 22 A. It doesn't look good.

13:45:02 23 Q. Why not?

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13:45:03 1 **A.** It just -- just doesn't look good.

13:45:04 2 **MS. HUGGINS:** Form.

13:45:05 3 **BY MR. RUPP:**

13:45:05 4 **Q.** Okay. Do you know if Mr. Kistner's son
13:45:07 5 was arrested for something at the scene?

13:45:09 6 **A.** I know Mr. Kistner was arrested. I
13:45:18 7 didn't know if his son was. I didn't have a
13:45:20 8 complaint from his son.

13:45:21 9 **Q.** All right. Let's keep watching. Do
13:45:37 10 you know if the officers asked Mr. Kistner's son to
13:45:39 11 identify himself and produce ID?

13:45:50 12 **A.** They may have said they -- they did.

13:45:53 13 **Q.** What are -- what are the circumstances
13:45:54 14 under which that's appropriate?

13:46:01 15 **MS. HUGGINS:** Form.

13:46:02 16 **BY MR. RUPP:**

13:46:02 17 **Q.** Are there any circumstances under which
13:46:04 18 that's appropriate?

13:46:06 19 **A.** Yes, you can ask for a person to
13:46:08 20 identify themselves.

13:46:09 21 **Q.** Okay. What are those circumstances?

13:46:11 22 **A.** If -- if his son was there and he was,
13:46:14 23 I don't know, in some way interfering or I don't --

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13:46:19 1 if he said he was -- he -- that's my father or
13:46:23 2 whatever, then you may ask him to identify
13:46:25 3 yourself, who are you.

13:46:26 4 Q. If he says he's his father, they need
13:46:30 5 to see ID that he's his --

13:46:30 6 A. No. Well, you can ask that.

13:46:31 7 Q. -- is the son?

13:46:32 8 A. You can ask that.

13:46:33 9 Q. Okay.

13:46:33 10 A. You know what I mean? There's no --
13:46:35 11 nothing wrong with asking that.

13:46:36 12 Q. Okay. So could he have declined?

13:46:38 13 A. Yes, he could decline. Yes.

13:46:39 14 Q. Okay. Do you have any idea why the
13:46:59 15 officers are not transporting the handcuffed
13:47:02 16 Mr. Kistner to the hospital?

13:47:03 17 A. No. At this particular time I see them
13:47:13 18 just dealing with the son.

13:47:15 19 Q. Do you know if Mr. Kistner complained
13:47:17 20 that the handcuffs had been applied to his wrists
13:47:21 21 too hard and were causing him pain and ask that
13:47:24 22 they be loosened?

13:47:25 23 A. I think in his statement, yeah.

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13:47:27 1 Q. Would it be appropriate to loosen
13:47:29 2 handcuffs that were applied too hard in the first
13:47:32 3 place, too tightly?

13:47:36 4 MS. HUGGINS: Form.

13:47:38 5 BY MR. RUPP:

13:47:39 6 Q. Is that a reasonable request for a
13:47:41 7 criminal arrestee to make, the handcuffs not be
13:47:44 8 applied too tightly?

13:47:46 9 MS. HUGGINS: Form. You can answer.

13:47:50 10 THE WITNESS: You can -- you can make that
13:47:52 11 request.

13:47:53 12 BY MR. RUPP:

13:47:53 13 Q. Okay. And would a reasonable officer
13:47:56 14 check to see if the handcuffs were too tight and
13:47:59 15 loosen them if they were?

13:47:59 16 A. At the appropriate time you can -- you
13:48:01 17 don't -- if he make the request, you don't -- if
13:48:03 18 you still dealing with another situation out there,
13:48:06 19 you would get to him and check the handcuffs and
13:48:09 20 see if they're too tight.

13:48:10 21 Q. Do you know if the officers ever
13:48:13 22 checked Mr. Kistner's handcuffs and loosened them
13:48:15 23 at his request?

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13:48:17 1 **A.** Not offhand, no.

13:48:19 2 **Q.** Do you know if he suffered any injury
13:48:20 3 as a result of the handcuffs being applied to
13:48:23 4 tightly to his wrists?

13:48:24 5 **A.** No.

13:48:25 6 **Q.** Now, Mr. Lockwood, is Mr. Kistner's son
13:48:40 7 being detained here? I mean, we saw the officers
13:48:43 8 bring him back with their hands on his arms to the
13:48:47 9 center of the street. Is he being detained?

13:48:50 10 **MS. HUGGINS:** Form.

13:48:54 11 **BY MR. RUPP:**

13:48:54 12 **Q.** Do you know if he's being detained?

13:48:57 13 **A.** No.

13:49:00 14 **Q.** Did the IAD investigators tell you what
13:49:16 15 the officers said they were talking about after
13:49:20 16 Mr. Kistner was hit by the SUV and -- and put in
13:49:22 17 the -- put in the SUV -- the other SUV handcuffed?

13:49:25 18 **A.** No.

13:49:29 19 **Q.** Do you have any idea why these officers
13:50:42 20 are not transporting Mr. Kistner to the hospital?

13:50:44 21 **A.** No.

13:50:46 22 **Q.** What's a 941?

13:50:58 23 **A.** It's when you admit someone to impact

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13:51:02 1 (phonetic) at ECMC when they're acting irrational.

13:51:08 2 Q. Do you know if that was done to

13:51:09 3 Mr. Kistner here?

13:51:11 4 A. That's what this says on the report.

13:51:15 5 Car 230 would be 941.

13:51:19 6 Q. 941 which means they're going to take

13:51:21 7 him to the psych unit at ECMC for a psych

13:51:26 8 evaluation, correct?

13:51:27 9 A. Yes.

13:51:28 10 Q. And that can sometimes result in an

13:51:32 11 admission involuntarily that can last for up to 10

13:51:37 12 days, correct?

13:51:38 13 A. I don't know how long it can last, but

13:51:41 14 yes.

13:51:41 15 Q. An involuntary admission, right?

13:51:43 16 A. Involuntary admission, yeah.

13:51:45 17 Q. Do you know how many times the officers

13:51:51 18 that are depicted in this video tried to get

13:51:51 19 Mr. Kistner involuntary admitted to ECMC on a

13:51:56 20 mandatory psych admit on the day of the incident?

13:51:59 21 MS. HUGGINS: Form.

13:51:59 22 BY MR. RUPP:

13:52:00 23 Q. Strike it.

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13:52:01 1 Do you know if the officers tried to get
13:52:03 2 Mr. Kistner admitted to ECMC for a psych evaluation
13:52:06 3 involuntarily --

4 A. Yes.

13:52:07 5 Q. -- under 941?

13:52:08 6 A. Yes.

13:52:08 7 Q. Do you know how many times they tried
13:52:12 8 to do that?

13:52:12 9 A. No.

13:52:13 10 Q. If I told you that they tried to do it
13:52:15 11 twice, would you have any reason to disagree with
13:52:17 12 me?

13:52:17 13 A. I don't know how many times.

13:52:22 14 Q. Was there anything that you seen in the
13:52:29 15 video depicting Mr. Kistner that would suggest to
13:52:34 16 you from what you observed that he was having a
13:52:36 17 psychiatric incident?

13:52:43 18 A. No. I -- I don't know the guy. I --

13:52:46 19 Q. I just asked what you observed.

13:52:48 20 A. What I observed? Repeat the question
13:52:55 21 again.

13:52:55 22 Q. Was there anything that you observed in
13:52:57 23 any of the video segments I showed you today

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13:53:00 1 depicting Mr. Kistner that appeared to show him
13:53:02 2 having any type of psychiatric incident?

13:53:05 3 **A.** I -- I can't answer that because I
13:53:14 4 don't know the guy.

13:53:16 5 **Q.** Well, I didn't ask you if you knew the
13:53:19 6 guy. I'm asking you if you saw anything there that
13:53:21 7 depicts --

13:53:21 8 **A.** I can't answer that.

13:53:22 9 **Q.** Can't answer the question. Can't or
13:53:23 10 won't?

13:53:23 11 **A.** No, I can't. I can't.

13:53:24 12 **Q.** Why can't you?

13:53:25 13 **A.** I don't know if he's having a -- you
13:53:29 14 know, if he's --

13:53:30 15 **Q.** Did it look to you like he was?

13:53:32 16 **A.** All I know is I saw a guy walking.
13:53:36 17 That's all.

13:53:36 18 **Q.** Right. You saw a guy get hit by an SUV
13:53:39 19 and get thrown to the ground, right?

13:53:41 20 **MS. HUGGINS:** Form.

13:53:41 21 **BY MR. RUPP:**

13:53:42 22 **Q.** Did you see that?

13:53:42 23 **A.** I saw an impact there. I --

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13:53:45 1 Q. Saw a guy fall to the ground, right?

13:53:48 2 A. Yes.

13:53:48 3 Q. And then you saw him walk to an SUV,
13:53:50 4 right?

13:53:50 5 A. Yes.

13:53:50 6 Q. Did he appear to be having any
13:53:54 7 psychiatric incident or episode as he walked?

13:53:57 8 A. I don't know.

13:53:57 9 Q. You don't know or you don't want to
13:53:58 10 answer?

13:53:59 11 A. I don't know.

13:53:59 12 Q. Okay. So he may have been having a
13:54:01 13 psychiatric incident while he walked?

13:54:02 14 A. It could have been.

13:54:04 15 Q. Okay. You still have no idea what
13:54:14 16 these officers are talking about, right?

13:54:16 17 A. No.

13:54:16 18 Q. And you still have no idea why they're
13:54:18 19 not transporting Mr. Kistner to the hospital for
13:54:20 20 checking to see whether he was injured?

13:54:23 21 A. No.

13:54:28 22 Q. All right. Mr. Lockwood, you have now
13:55:56 23 seen all five of the outtakes from Mr. Kistner's

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13:56:02 1 surveillance cameras.

13:56:03 2 And my question to you is, having seen what
13:56:05 3 you saw depicted on those videos, does that give
13:56:08 4 rise to any other concerns beyond the ones that
13:56:11 5 you've already told me about relative to the way
13:56:13 6 the officers from C district handled the episode
13:56:16 7 involving Mr. Kistner?

13:56:17 8 **MS. HUGGINS:** Form.

13:56:18 9 **THE WITNESS:** Yeah, I need you to repeat
13:56:20 10 that. I didn't understand your question.

13:56:21 11 **MR. RUPP:** Okay. Could you repeat that
13:56:22 12 back, Andrea?

13 **THE REPORTER:** Sure.

14 **MS. HUGGINS:** While she reads it, what do
13:56:38 15 you think in terms of timing?

13:56:38 16 **MR. RUPP:** Um --

17 **MS. HUGGINS:** We're just at the 2 o'clock
18 hour.

19 **THE REPORTER:** Do you want to go off the
20 record?

21 **MR. RUPP:** We can stay on.

22 **MS. HUGGINS:** We don't have to -- I just --

23 **THE REPORTER:** Okay.

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13:56:39 1 **MR. RUPP:** I'm probably going to take the
13:56:40 2 full -- I mean, I'm going to take probably until
13:56:43 3 4 o'clock with him, I'd imagine.

13:56:43 4 **MS. HUGGINS:** Could we then take a break
13:56:46 5 then?

13:56:46 6 **MR. RUPP:** Sure.

13:56:47 7 **MS. HUGGINS:** Do you need to make -- give
13:56:48 8 any -- do you want to go off the record? Sorry, I
9 don't want to --

10 **MR. RUPP:** Okay.

13:56:50 11 **THE VIDEOGRAPHER:** Going off the record at
13:56:52 12 1356.

13:58:26 13 (Discussion off the record.)

13:58:26 14 **THE VIDEOGRAPHER:** Going back on the record
13:58:28 15 at 1358.

13:58:30 16 **BY MR. RUPP:**

13:58:30 17 **Q.** Okay. Mr. Lockwood, have you now had
13:58:32 18 the question that I just asked you read back to you
13:58:35 19 by our court reporter?

13:58:38 20 **A.** Yes, she read the questions back to me
13:58:41 21 and I --

13:58:47 22 **Q.** I guess let me try -- let me try again
13:58:49 23 then because obviously my question's confusing you.

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13:58:52 1 As we went through those videos I asked you
13:58:55 2 a lot of questions, right?

13:58:55 3 A. Yes.

13:58:55 4 Q. And I asked you if there were certain
13:58:57 5 things that concerned you and certain things that
13:59:00 6 didn't and you -- you told me a few things did
13:59:01 7 concern you or that you saw in the videos, right?

13:59:04 8 A. Yes.

13:59:04 9 Q. So I'm not asking about those. Those
13:59:06 10 are already covered. I'm asking if anything I
13:59:09 11 didn't ask you, if you saw anything on those videos
13:59:11 12 that causes you a concern that I didn't ask you
13:59:15 13 about?

13:59:16 14 MS. HUGGINS: Same form objection. You may
13:59:18 15 answer that question.

13:59:19 16 THE WITNESS: No.

13:59:21 17 BY MR. RUPP:

13:59:22 18 Q. Okay. Anything else that you saw that
13:59:23 19 was a violation of the MOP?

13:59:25 20 A. No.

13:59:28 21 Q. Anything else that you want to follow
13:59:29 22 up with these officers about?

13:59:34 23 A. Conversation -- I would have a

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13:59:45 1 conversation with internal affairs.

13:59:46 2 Q. That was going to be my next question.

13:59:49 3 Is there anything else you want to the bring to the
13:59:50 4 attention of internal affairs about what you saw in
13:59:52 5 those videos?

13:59:53 6 A. Yes.

13:59:53 7 Q. Okay. What are those?

13:59:55 8 A. I just want to go back and find out why
13:59:57 9 was the officers standing around and what -- you
14:00:00 10 know, why wasn't they transporting the guy,
14:00:03 11 Mr. Kistner.

14:00:04 12 If they were going to take him to the
14:00:06 13 hospital, take him to the hospital. Why was, you
14:00:09 14 know, they standing around there talking.

14:00:11 15 Q. Okay.

14:00:11 16 A. That's a little concerning there.

14:00:13 17 Q. All right. Anything else?

14:00:14 18 A. No.

14:00:15 19 Q. Okay. Now, I want to go back to
14:00:21 20 Exhibit 43, if I could, if that's still in front of
14:00:22 21 you, sir. It's the case index.

14:00:27 22 A. Okay.

14:00:28 23 Q. Now, I may have asked you already, you

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14:00:31 1 know, why the case index that you want over with
14:00:34 2 Lieutenant Kelly in August of 2020 did not include
14:00:37 3 all of the video segments.

14:00:39 4 And I don't remember if I asked you that or
14:00:42 5 if you gave me an answer, but can you tell me why
14:00:45 6 the videos wouldn't have been a major part of IAD's
14:00:49 7 investigation here?

14:00:50 8 **MS. HUGGINS:** Form. You can answer.

14:00:52 9 **MR. RUPP:** Strike it. We're just going to
10 be at this.

11 **MS. HUGGINS:** No.

12 **BY MR. RUPP:**

14:00:54 13 **Q.** Can you tell me why the videos aren't
14:00:56 14 on here?

14:00:59 15 **A.** No, I can't.

14:01:00 16 **Q.** Okay. I would think that when you have
14:01:02 17 video evidence of what happened at a scene, it
14:01:05 18 would be really, really important. Am I wrong
14:01:07 19 there?

14:01:07 20 **A.** No.

14:01:08 21 **Q.** Okay. So you're aware, I think you
14:01:13 22 told me, you knew the videos existed before you sat
14:01:16 23 down with Lieutenant Kelly in August of 2020,

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14:01:19 1 right?

14:01:20 2 **A.** I knew of the first video of the impact
14:01:25 3 striking.

14:01:26 4 **Q.** Okay.

14:01:26 5 **A.** The other videos with them standing
14:01:28 6 around, I had no knowledge of those videos.

14:01:31 7 **Q.** Okay. So when this case index is
14:01:34 8 handed to you, do you say to Lieutenant Kelly, why
14:01:37 9 is -- why is the video not on here?

14:01:39 10 **A.** I had saw the one video. So --

14:01:48 11 **Q.** But you didn't see --

14:01:49 12 **A.** -- in my -- in my mind I was thinking
14:01:50 13 that was the only video.

14:01:52 14 **Q.** No, no, I get that. But why isn't it
14:01:54 15 on the case index, why isn't it there as -- as
14:01:58 16 evidence of what happened?

14:01:59 17 **A.** I don't know.

14:02:00 18 **Q.** Okay. And you didn't look at the video
14:02:03 19 the day you met with Lieutenant Kelly, I think you
14:02:05 20 said you'd seen it before?

14:02:05 21 **A.** I had already seen it, yes.

14:02:07 22 **Q.** Okay. But now you got all this other
14:02:09 23 stuff, you can compare what's on the video to what

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14:02:13 1 the officers said happened.

14:02:15 2 You can look at the video and say is that
14:02:17 3 true. Why aren't you doing that?

14:02:19 4 **A.** The video that I saw was the video of
14:02:23 5 the impact and I did -- that's what I was making my
14:02:27 6 determination off of that video.

14:02:30 7 Now, the lawsuit is with Mr. Kistner. I
14:02:35 8 mean, the case -- the IAD case with Mr. Kistner,
14:02:39 9 that's what I was basing my decision on that
14:02:44 10 particular incident.

14:02:46 11 That he -- that she intentionally hit him
14:02:49 12 with the police vehicle and from my conclusion it
14:02:55 13 didn't -- you know, it just didn't look like it was
14:02:58 14 intentional.

14:02:59 15 **Q.** But Mr. Lockwood, isn't there something
14:03:01 16 between intentionally hitting him with the SUV and
14:03:04 17 him committing a felony, throwing himself at the
14:03:07 18 SUV? Isn't there something in between those two
14:03:10 19 extremes?

14:03:10 20 **MS. HUGGINS:** Form.

14:03:11 21 **BY MR. RUPP:**

14:03:12 22 **Q.** Did you look at the incident to see
14:03:14 23 whether she negligently hit him, accidentally hit him

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14:03:18 1 with the SUV?

14:03:19 2 **A.** I looked at the video and I -- I
14:03:22 3 couldn't -- the video can't -- the video didn't --
14:03:28 4 didn't show me. I couldn't see in -- in that video
14:03:31 5 where it was anything intentional.

14:03:34 6 **Q.** Okay. I'm asking you about negligence,
14:03:37 7 Mr. Lockwood. You're aware that they accused him
14:03:41 8 of a felony, right?

14:03:42 9 **A.** I know they -- yes --

10 **Q.** Okay.

14:03:44 11 **A.** -- they locked him up.

14:03:47 12 **Q.** They charged him with a felony, right?

14:03:50 13 **A.** Yes.

14:03:50 14 **Q.** It went to the district attorney's
14:03:53 15 office with a felony charge that he had thrown
14:03:54 16 himself at the SUV, right?

14:03:55 17 **A.** Yes.

14:03:56 18 **Q.** Do you think there was enough evidence
14:03:58 19 on that video to support the charges brought by
14:04:02 20 your C district officers against Mr. Kistner?

14:04:04 21 **MS. HUGGINS:** Form. You can answer.

14:04:07 22 **THE WITNESS:** Felony, I wouldn't say, but --

14:04:20 23 **BY MR. RUPP:**

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14:04:21 1 Q. Any crime at all. Walking up to a
14:04:23 2 police SUV and getting hit by it is a crime in the
14:04:26 3 City of Buffalo?

14:04:26 4 MS. HUGGINS: Form.

14:04:35 5 BY MR. RUPP:

14:04:35 6 Q. You tell me what the crime is.

14:04:36 7 A. If the officers -- the officers said he
14:04:40 8 intentionally threw himself at the vehicle, they
14:04:43 9 felt that and that's why they charged him with the
14:04:46 10 criminal mischief.

14:04:47 11 I look at the video and -- and it looks
14:04:51 12 like, you know, an accident to me. You know, it --
14:04:53 13 I'm -- he could have possibly threw himself, but I
14:04:59 14 can't tell. I can't tell by the video.

14:05:00 15 Q. All right.

14:05:01 16 A. I just can't tell.

14:05:02 17 Q. So now, you're aware that
14:05:04 18 Officer Schultz said that he saw the incident and
14:05:11 19 saw that Mr. Kistner had thrown himself at the SUV,
14:05:14 20 are you aware of that?

14:05:15 21 A. I saw it in his statement, yes.

14:05:17 22 Q. Okay. You probably would have seen it
14:05:19 23 in his deposition testimony if you reviewed that,

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14:05:22 1 right?

14:05:22 2 **A.** I just saw it in his statement.

14:05:24 3 **Q.** Okay. Are you aware that he claims to

14:05:26 4 have seen that while in the SUV driven by

14:05:32 5 Mr. Moriarity facing the opposite way and driving

14:05:34 6 away?

14:05:34 7 **MS. HUGGINS:** Form.

14:05:35 8 **BY MR. RUPP:**

14:05:35 9 **Q.** Are you aware of that? We can go

14:05:39 10 through it slowly, Mr. Lockwood. Where was

14:05:41 11 Mr. Schultz at the time, according to the videos,

14:05:45 12 Mr. Kistner was hit by Ms. McDermott's SUV?

14:05:48 13 **A.** Pulling off.

14:05:48 14 **Q.** And where was he seated?

14:05:50 15 **A.** Passenger.

14:05:51 16 **Q.** And where was that SUV?

14:05:56 17 **A.** His SUV?

14:05:56 18 **Q.** Yeah.

14:05:56 19 **A.** It was going down the street.

14:05:57 20 **Q.** Driving away, right?

14:05:58 21 **A.** Yes.

14:05:59 22 **Q.** Now, are you aware that Mr. Schultz

14:06:01 23 claims that even though he was facing the opposite

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14:06:04 1 way, that he saw Mr. Kistner throw himself at
14:06:09 2 Ms. McDermott's SUV from the driver's side mirror
14:06:14 3 adjacent to Mr. Moriarity?

14:06:15 4 **A.** I'm aware.

14:06:16 5 **MS. HUGGINS:** Form.

14:06:16 6 **BY MR. RUPP:**

14:06:17 7 **Q.** And he saw that from the passenger's
14:06:20 8 seat in Mr. Moriarity's car?

14:06:22 9 **A.** That was the statement.

14:06:23 10 **Q.** Okay. Now, do you just take the
14:06:25 11 statement as true no matter what Mr. Schultz says?

14:06:27 12 **A.** Unless you give me some other reason to
14:06:39 13 say that his statement was a lie, then --

14:06:40 14 **Q.** Well, how about common sense --

15 **MS. HUGGINS:** Well --

16 **BY MR. RUPP:**

14:06:42 17 **Q.** -- Mr. Lockwood?

14:06:43 18 **MS. HUGGINS:** -- allow him to finish his
14:06:45 19 answer.

14:06:45 20 **BY MR. RUPP:**

14:06:45 21 **Q.** Well, he asked me to give him and I'm
14:06:46 22 going to give it to him. Mr. Lockwood --

14:06:46 23 **MS. HUGGINS:** Well --

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1 BY MR. RUPP:

2 Q. -- have you ever tried --

3 MS. HUGGINS: -- did you complete your

14:06:48 4 answer?

5 THE REPORTER: Wait. I need one at a time,

14:06:49 6 please.

14:06:49 7 MS. HUGGINS: Yeah. Did you complete your

14:06:51 8 answer, Commissioner?

14:06:52 9 THE WITNESS: Yeah.

14:06:53 10 MS. HUGGINS: Okay.

14:06:53 11 BY MR. RUPP:

14:06:53 12 Q. All right. And I'll give it to you

14:06:55 13 now. You asked me to give you a reason. Have you

14:06:58 14 ever looked out the driver's side mirror of a

14:07:00 15 vehicle when you're sitting in the passenger's

14:07:03 16 seat?

14:07:04 17 A. The driver's --

18 Q. Mr. Lockwood --

14:07:11 19 A. Have I -- have I ever?

14:07:12 20 Q. Yeah.

14:07:12 21 A. No.

14:07:12 22 Q. You never tried to do that, have you?

14:07:14 23 A. No.

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14:07:14 1 Q. And that's because the driver's side
14:07:16 2 mirror adjacent to the driver is set for the
14:07:20 3 driver's eyes where they're situated to look in,
14:07:22 4 right?

14:07:23 5 A. I wouldn't -- I -- if I'm the
14:07:26 6 passenger, I'm not looking out the driver's side.
14:07:29 7 Schultz, I don't know what -- where he's looking.
14:07:31 8 I mean, he could be looking out -- looking
14:07:33 9 at -- he could have seen it from the rearview. I
10 don't know. He just --

11 Q. He didn't say --

12 A. -- he put in his statement --

13 **THE REPORTER:** I need one at a time, please.

14:07:37 14 **BY MR. RUPP:**

14:07:37 15 Q. Mr. Lockwood, he didn't say rearview
14:07:40 16 mirror. He said I am looking out the side-view
14:07:44 17 mirror on Mr. Moriarity's side of the vehicle.

14:07:48 18 And he says that mirror, even though he's
14:07:51 19 driving away, was positioned in such a way that he
14:07:54 20 could see Mr. Schultz -- Mr. Kistner throw himself
14:07:59 21 at Ms. McDermott's SUV.

14:08:01 22 That was his testimony under oath and that
14:08:03 23 was the statements that he used to support the

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14:08:06 1 arrest of Mr. Kistner. Do you have any reason to
14:08:08 2 disagree with me that he said that?

14:08:09 3 **A.** I don't disagree that he said it. If
14:08:11 4 it's in the statement, then he said -- that's what
14:08:13 5 he said.

14:08:13 6 **Q.** So your job at these hearings that you
14:08:17 7 go to or these meetings with IAD, you don't just
14:08:20 8 take what the officer said as gospel no matter how
14:08:23 9 implausible is it, do you?

14:08:26 10 **A.** No, I don't take it. No.

14:08:28 11 **Q.** So if the officer is obviously lying or
14:08:31 12 saying he saw something he couldn't see, that
14:08:34 13 triggers your responsibilities as the chief
14:08:37 14 disciplinary officer of the Buffalo Police
14:08:39 15 Department to say, wait a second, doesn't it?

14:08:42 16 **A.** Yes.

14:08:47 17 **Q.** Okay. So Officer Schultz facing the
14:08:47 18 opposite way from Mr. Kistner, says he happens to
14:08:50 19 be looking across Mr. Moriarity's body in
14:08:53 20 Mr. Moriarity's window and sees Mr. Kistner throw
14:08:57 21 himself in that mirror at Ms. -- at Ms. McDermott's
14:09:01 22 vehicle and you believe that?

14:09:04 23 **A.** That's the statement.

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14:09:09 1 Q. So you just believed it, whatever he
14:09:11 2 said, didn't matter what he said? Whether it was
14:09:12 3 possible, whether a mirror would have been angled
14:09:17 4 for him to see, you didn't care. If he said it,
14:09:20 5 it's true?

14:09:21 6 MS. HUGGINS: Form.

14:09:21 7 BY MR. RUPP:

14:09:23 8 Q. Is that right, Mr. Lockwood, if he said
14:09:24 9 it, it's true?

14:09:25 10 A. That's his statement.

14:09:27 11 Q. So it's true?

14:09:28 12 MS. HUGGINS: Form.

14:09:28 13 THE WITNESS: That's his statement.

14:09:29 14 BY MR. RUPP:

14:09:30 15 Q. Okay. Do you -- do you ever say that's
14:09:31 16 not possible, Officer Schultz, you couldn't have
14:09:34 17 seen what you said you saw, you're lying? Would
14:09:36 18 you ever say that?

14:09:37 19 A. If there was proof to it, yes.

14:09:41 20 Q. Isn't that proof enough, Mr. Lockwood,
14:09:43 21 for you? What more proof do you need?

14:09:46 22 MS. HUGGINS: Form.

14:09:46 23 THE WITNESS: That was his statement.

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14:09:48 1 **BY MR. RUPP:**

14:09:49 2 **Q.** You keep saying that, Mr. Lockwood.
14:09:51 3 That's not my question. Was his statement true?

14:09:53 4 **A.** Yes. I mean, other -- yes, I --
14:09:59 5 there's no video inside the car saying that he
14:10:02 6 wasn't looking or he was or whatever.

14:10:05 7 I mean, if he said that happened, that
14:10:07 8 happened. I -- I can't just come back and say
14:10:09 9 well, you didn't do this or you didn't do that, no.

14:10:12 10 **Q.** So that's your role as you see it as
14:10:15 11 commissioner at these IAD hearing, if he said it,
14:10:18 12 he said it, it happened, that's what you do?

14:10:20 13 **A.** No.

14:10:20 14 **MS. HUGGINS:** Form.

14:10:21 15 **BY MR. RUPP:**

14:10:21 16 **Q.** Well, what do you do, Mr. Lockwood,
14:10:22 17 when something as implausible as that? Why would
14:10:26 18 that mirror be positioned for Mr. Schultz to see
14:10:29 19 things from the passenger's seat?

14:10:30 20 **MS. HUGGINS:** Form. That's an objectionable
14:10:33 21 question.

22 **BY MR. RUPP:**

14:10:34 23 **Q.** You can object all you want. I'm going

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14:10:36 1 to ask him.

14:10:37 2 Why would Mr. Moriarity's mirror be
14:10:40 3 positioned so Mr. Schultz could see something in
14:10:43 4 the rearview?

14:10:44 5 **MS. HUGGINS:** Form.

14:10:45 6 **THE WITNESS:** That's his statement. He --
14:10:51 7 he said that he saw it and that's his statement.

14:10:58 8 **BY MR. RUPP:**

14:10:58 9 **Q.** And you don't see that you have any
14:11:00 10 obligation to vet that statement for truth?

14:11:04 11 **MS. HUGGINS:** Form.

14:11:06 12 **BY MR. RUPP:**

14:11:06 13 **Q.** What do you do to verify whether that
14:11:09 14 was true or not, Mr. Lockwood? Tell me everything
14:11:11 15 you did.

14:11:11 16 **A.** I read the statement. That was his
14:11:15 17 statement. There's nothing to say that he didn't
14:11:23 18 see it. So --

14:11:25 19 **Q.** Other than common sense and physics,
14:11:29 20 right?

14:11:29 21 **MS. HUGGINS:** Form.

14:11:33 22 **BY MR. RUPP:**

14:11:33 23 **Q.** So for you to believe that,

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14:11:35 1 Mr. Lockwood, you would have to believe that at the
14:11:38 2 precise moment not knowing that anything's going to
14:11:40 3 be happening, he's not looking forward where the
14:11:43 4 SUV is driving where his eyes would normally be.
14:11:47 5 He's looking for some reason at Mr. Moriarity's
14:11:50 6 side-view mirror, right?

14:11:50 7 **A.** I don't know what Karl Schultz would be
14:11:52 8 looking for or looking when he's driving.

14:11:54 9 **Q.** That's what I'm asking. I'm asking for
14:11:56 10 you to believe that, you would have to believe that
14:11:58 11 driving forward he's looking in Mr. Moriarity's
14:12:00 12 side-view mirror.

14:12:02 13 Not his own, not the rearview, not out the
14:12:05 14 windshield, not out the side-view of his door.
14:12:07 15 He's looking at that precise moment at
14:12:09 16 Mr. Moriarity's side-view mirror, right?

14:12:11 17 **A.** That's his --

14:12:11 18 **MS. HUGGINS:** Form.

14:12:12 19 **THE WITNESS:** That's his statement.

14:12:15 20 **BY MR. RUPP:**

14:12:16 21 **Q.** Okay. So you would have to believe --

22 **THE REPORTER:** Can we just slow it down a
23 little bit?

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1 **BY MR. RUPP:**

14:12:16 2 **Q.** Sure. You would have to believe that
14:12:17 3 to be true, right, Mr. Lockwood?

14:12:18 4 **A.** Yes.

14:12:20 5 **Q.** And then you'd have to believe that
14:12:22 6 that mirror was positioned in such a way that
14:12:26 7 Mr. Schultz could see something in that mirror
14:12:30 8 other than the side of the SUV, right? For it to
14:12:38 9 be true, you'd have to believe that, right?

14:12:39 10 **MS. HUGGINS:** Form.

14:12:40 11 **THE WITNESS:** I believe that he -- his
14:12:41 12 statement -- that was his statement and I have no
14:12:45 13 other reason not to believe it.

14:12:46 14 **BY MR. RUPP:**

14:12:46 15 **Q.** Okay. So for it to be true, though,
14:12:48 16 you'd have to believe that the mirror was
14:12:50 17 positioned in such a way that he could see the
14:12:53 18 action behind him, right?

14:12:54 19 **A.** Yes.

14:12:54 20 **Q.** Okay. And then while the SUV is
14:12:56 21 moving, you'd have to believe that he had a view of
14:12:59 22 Mr. Kistner throwing himself into Ms. McDermott's
14:13:02 23 SUV?

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14:13:02 1 **A.** That's his statement.

14:13:04 2 **Q.** Okay. And you'd have to -- and to
14:13:05 3 believe it, you'd have to believe that he could see
14:13:07 4 all that in the mirror that he's looking across
14:13:10 5 Mr. Moriarity's body to see Mr. Kistner do that,
14:13:13 6 right?

14:13:13 7 **A.** That's his statement, yeah.

14:13:15 8 **Q.** Mr. -- Mr. Lockwood, you're avoiding my
14:13:18 9 question.

14:13:18 10 **A.** Yes.

14:13:18 11 **Q.** I'm asking you if that was what you
14:13:21 12 would have to believe to believe the truth of that
14:13:23 13 statement?

14:13:24 14 **A.** I -- I -- yes, I believe, you know,
14:13:24 15 that his statement said that he saw this out the
14:13:28 16 window and there's nothing compelling to tell me
14:13:32 17 that he didn't see it.

14:13:33 18 **Q.** Okay. So you believe him?

14:13:34 19 **A.** Yes.

14:13:34 20 **Q.** Okay. And you believed him at the
14:13:37 21 time --

14:13:37 22 **MS. HUGGINS:** Form.

14:13:38 23 **BY MR. RUPP:**

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14:13:38 1 Q. -- right? The time being August 2020
14:13:40 2 when you met with Lieutenant Kelly, you believed
14:13:43 3 what Mr. Schultz said backing up Officer McDermott --

14:13:47 4 A. Yes.

14:13:47 5 Q. -- right? And you believe him to this
14:13:49 6 day despite what I'm asking you the questions and
14:13:52 7 what you saw on the video?

14:13:53 8 A. Yes.

14:13:53 9 Q. Okay. But you never talked to
14:13:56 10 Officer Schultz, right?

14:13:57 11 A. No.

14:13:57 12 Q. And you know that Officer Schultz is on
14:13:59 13 the top 10 list of most complained about officers
14:14:02 14 for excessive force and for citizen complaints,
14:14:05 15 right?

14:14:05 16 MS. HUGGINS: Form.

14:14:06 17 THE WITNESS: I don't know nothing about a
14:14:07 18 top 10 list.

14:14:09 19 BY MR. RUPP:

14:14:09 20 Q. Well, you knew about the disciplinary
14:14:12 21 cards for all four officers, right?

14:14:13 22 A. Yes.

14:14:13 23 Q. And those disciplinary cards include

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14:14:18 1 their history of complaints and IAD determinations,
14:14:23 2 right, or commissioner determinations, right?

14:14:26 3 **A.** Yes.

14:14:26 4 **MR. RUPP:** All right. I'm going to ask if
14:14:28 5 you can mark that.

6 **THE REPORTER:** 45?

7 **MR. RUPP:** Yeah. And I'll ask you to
8 mark --

9 **MS. HUGGINS:** What was 44?

10 **THE REPORTER:** So maybe we are on 44? Could
11 be my mistake.

12 **MS. HUGGINS:** No, I could be wrong too.

13 **MR. RUPP:** We marked the second DVD. We had
14 two DVDs marked. So I don't know if -- or no,
15 those were already pre-marked.

16 **MS. HUGGINS:** Those were already pre-marked.

17 **THE REPORTER:** So it might be 44. It's 44,
18 you're right.

19 **The following was marked for Identification:**

20 **EXH. 44** **Disciplinary summary.**

21 **EXH. 45** **Disciplinary card.**

14:15:51 22 **BY MR. RUPP:**

14:15:57 23 **Q.** Now, Mr. Lockwood, when you were

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14:16:02 1 meeting with Lieutenant Kelly and going over the
14:16:07 2 allegations of Mr. Kistner from the IAD
14:16:12 3 investigation, you had Mr. Schultz's disciplinary
14:16:15 4 card before you, did you not?

14:16:17 5 **A.** Yes, it was in the file.

14:16:19 6 **MR. RUPP:** I'm sorry, what was the exhibit
7 number on that?

8 **MS. HUGGINS:** 45.

9 **THE REPORTER:** 44. Or --

10 **MR. RUPP:** 45 --

11 **THE REPORTER:** 45.

12 **MR. RUPP:** -- on the card and 44 on the
13 other one?

14:16:29 14 **THE REPORTER:** The bigger packet was 44.

14:16:31 15 **BY MR. RUPP:**

14:16:31 16 **Q.** Okay. And let's go through this for a
14:16:33 17 second, Mr. Lockwood, because Mr. Schultz's
14:16:36 18 testimony and what the statements he made to IAD
14:16:40 19 and the arrest records all backed up
14:16:43 20 Lauren McDermott saying that Jim Kistner threw
14:16:47 21 himself at her SUV, right?

14:16:49 22 **A.** Yes.

14:16:49 23 **Q.** So he's an important witness, right?

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14:16:51 1 A. Yes.

14:16:52 2 Q. I mean, there's corroboration for the
14:16:54 3 driver that it wasn't her fault, Mr. Kistner did
14:16:56 4 it, right?

14:16:57 5 A. Yes.

14:16:57 6 Q. Okay. So now, when you're evaluating
14:17:01 7 the credibility and reliability of Mr. Schultz's
14:17:05 8 corroborating testimony, did you review his
14:17:09 9 disciplinary card?

14:17:10 10 A. I looked at it.

14:17:12 11 Q. Okay. And let's see. He's got -- the
14:17:15 12 first one is January 6th of 2010. A complaint
14:17:19 13 against him for conduct in procedures, right?

14:17:23 14 A. Yes.

14:17:23 15 Q. March 10 of 2011, use of force, right?

14:17:26 16 A. Yes.

14:17:26 17 Q. These are all complaints, correct?

14:17:28 18 A. Mm-hmm.

14:17:29 19 Q. Is that yes?

14:17:30 20 A. Yes. Yes, I'm sorry. I'm sorry.

14:17:32 21 Q. March 28, 2011, conduct. And that's an
14:17:35 22 allegation of misconduct, right?

14:17:36 23 A. Conduct.

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14:17:39 1 Q. What does conduct mean?

14:17:41 2 A. His -- could -- could be his behavior
14:17:44 3 or something that he may have did that wasn't
14:17:48 4 proper.

14:17:48 5 Q. Okay. Isn't good conduct, right?

14:17:50 6 A. Yes.

14:17:51 7 Q. This isn't the good conduct list, is
14:17:53 8 it?

14:17:53 9 A. No.

14:17:54 10 Q. Okay. 6/4/2012, use of force again,
14:17:59 11 right?

14:17:59 12 A. Yes.

14:18:00 13 Q. 6/24/2012, use of force on-duty
14:18:03 14 shooting?

14:18:06 15 A. Yes.

14:18:06 16 Q. Okay. And each one of those, we've
14:18:09 17 just gone through five, the results were for the
14:18:12 18 2010 incident other chief continued 5/12/10. What
14:18:20 19 does that mean?

14:18:21 20 A. I think that's -- I think that was
14:18:24 21 his -- shouldn't continue -- I would probably
14:18:37 22 think -- 5/2/10 -- I don't see nothing on this card
14:18:41 23 for that so I don't know.

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14:18:43 1 Q. So when did -- when did Officer Schultz
14:18:46 2 join the force?

14:18:47 3 A. He joined the force -- they appointed
14:18:55 4 him in 2008.

14:18:55 5 Q. All right. So within a year and a half
14:18:55 6 he has his first complaint -- citizen complaint
14:18:59 7 from conduct slash procedures, right?

14:19:02 8 A. Yes.

14:19:02 9 Q. All right. And then on March 10, 2010,
14:19:05 10 he has a use of force complaint not sustained,
14:19:08 11 right?

14:19:08 12 A. Yes.

14:19:08 13 Q. And on March 28, 2011, he has another
14:19:12 14 allegation of misconduct also not sustained, right?

14:19:15 15 A. Yes.

14:19:15 16 Q. And on June 4, 2012, he has another use
14:19:20 17 of force not sustained, right?

14:19:21 18 A. Yes.

14:19:22 19 Q. And on June 24, 2012, he has use of
14:19:28 20 force on-duty shooting not sustained, right?

14:19:29 21 A. Yes.

14:19:29 22 Q. On March 12, 2013, he has another use
14:19:32 23 of force not sustained other DPC conference. What

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14:19:38 1 does that mean?

14:19:39 2 **A.** The charge was not sustained, but
14:19:45 3 they -- he needed a -- I guess the commissioner
14:19:50 4 decide that he would have a -- give him a
14:19:51 5 conference.

14:19:52 6 **Q.** Now, he's four and a half years into
14:19:54 7 his service with BPD and he -- that is his sixth
14:19:58 8 citizen complaint against him; is that right?

14:20:00 9 **A.** Yes.

14:20:01 10 **Q.** All right. So then September 10th,
14:20:06 11 2013, use of force not sustained, correct?

14:20:11 12 **A.** You said September 10th?

14:20:13 13 **Q.** Yeah, September 10th, 2013.

14:20:15 14 **A.** Oh, '13. 13'. Okay. Yes.

14:20:16 15 **Q.** All right. Am I right, not sustained
14:20:18 16 again?

14:20:18 17 **A.** Yes.

14:20:18 18 **Q.** January 9, 2015, procedures not
14:20:22 19 sustained, right?

14:20:23 20 **A.** Yes.

14:20:23 21 **Q.** October 20 -- 14, 2015, procedures city
14:20:30 22 investigate accident. 11/25/15 other deposition
14:20:36 23 DPC conference.

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14:20:39 1 When I asked you before what the outcomes of
14:20:41 2 these could be, you didn't tell me about other.

14:20:51 3 A. I don't -- I probably would have to
14:20:57 4 talk to the inspector to find out what other is. I
14:20:59 5 know the deposition on this is a deputy police
14:21:05 6 commissioner conference. Now, what they mean by
14:21:08 7 other, I'm not -- 11 --

14:21:10 8 Q. August 30, 2016, conduct not sustained.

14:21:15 9 A. The only thing I can think of -- just
14:21:18 10 go back for a minute. The only thing I can think
14:21:20 11 about other is it must have been another charge or
14:21:23 12 another -- they must have been investigating him
14:21:24 13 about something. So that's the only thing I can
14:21:27 14 come up with.

14:21:27 15 Q. But so far we don't have a single
14:21:29 16 sustained on any of these citizen complaints
14:21:32 17 against C district's Officer Schultz, am I right?
14:21:37 18 We don't have any sustained?

14:21:39 19 A. Right.

14:21:39 20 Q. Okay.

14:21:40 21 A. Right.

14:21:40 22 Q. So now, November 24, 2016, conduct
14:21:46 23 weapon pointed. Another other DPC conference is

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14:21:49 1 the outcome, right?

14:21:50 2 **A.** Yes.

14:21:51 3 **Q.** All right. Now, this is the same

14:21:54 4 fellow now he's got multiple use of force, an

14:21:57 5 on-duty shooting and a weapon pointed.

14:22:00 6 This is the same guy who got the city a \$4.5

14:22:05 7 million liability judgment for shooting somebody

14:22:07 8 else and none of these are sustained all the way

14:22:09 9 through, am I correct?

14:22:10 10 **MS. HUGGINS:** Form.

14:22:11 11 **THE WITNESS:** Yes.

14:22:11 12 **BY MR. RUPP:**

14:22:12 13 **Q.** Is that right? So Officer -- or

14:22:14 14 Mr. Lockwood, is it just the role of the police

14:22:17 15 commissioner to just rule in favor of the officer

14:22:20 16 at the IAD hearings every time?

14:22:22 17 **A.** No.

14:22:22 18 **Q.** Well, how hard do you try to get at the

14:22:28 19 truth when you're at one of those IAD proceedings?

14:22:30 20 **A.** I look at the facts. I look at the

14:22:38 21 investigation and the facts.

14:22:39 22 **Q.** So June 29, 2017, use of force physical

14:22:44 23 not sustained, am I right?

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14:22:46 1 **A.** Yes.

14:22:48 2 **Q.** May 24, 2019, excessive force not
14:22:54 3 sustained, right?

14:22:55 4 **A.** Yes.

14:22:55 5 **Q.** And what's missing here is
14:22:58 6 Mr. Kistner's complaint should have been sometime
14:23:06 7 no later than March 31 of 2018 -- or March 31,
14:23:10 8 2017, when the Notice of Claim was filed. That
14:23:12 9 should be on here, right, if procedures had been
14:23:14 10 followed?

14:23:15 11 **MS. HUGGINS:** Form.

14:23:17 12 **BY MR. RUPP:**

14:23:18 13 **Q.** Is that right, Mr. Lockwood? You
14:23:19 14 testified earlier that the Notice of Claim should
14:23:21 15 have triggered an IAD investigation and that Notice
14:23:24 16 of Claim was filed on March 31, 2017, right?

14:23:26 17 **A.** Yeah, it should have been on here.

14:23:29 18 **Q.** That's not on here, is it?

14:23:32 19 **A.** No.

14:23:32 20 **Q.** So May 24, 2019, excessive force not
14:23:38 21 sustained, correct?

14:23:39 22 **A.** Yes.

14:23:40 23 **Q.** Two weeks later June 6th, 2019,

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14:23:44 1 excessive force exonerated; is that right?

14:23:50 2 **A.** Yes, yes.

14:23:51 3 **Q.** Now, we have 12/19/2019. IAD case

14:23:55 4 number EC2019-46, date opened 12/19/2019. Does

14:24:04 5 that confirm what I told you earlier that the IAD

14:24:08 6 investigation into Mr. Kistner's allegations was

14:24:11 7 not opened until December 2019?

14:24:14 8 **A.** Yes.

14:24:15 9 **Q.** Okay. And do you understand that that

14:24:17 10 was after WIVB did an investigative journalism

14:24:22 11 report on Mr. Kistner's complaint and played the

14:24:24 12 video in a five-minute segment?

14:24:27 13 **A.** You said it was --

14:24:33 14 **Q.** In December of 2019. They played the

14:24:37 15 video that I showed you or excerpts from it and did

16 an --

17 **A.** Yes.

14:24:41 18 **Q.** -- investigative journalism report on

14:24:44 19 Buffalo Police Department and Mr. --

14:24:47 20 Ms. McDermott's driving --

14:24:48 21 **A.** Yes.

14:24:48 22 **Q.** -- et cetera. Are you aware of that?

14:24:50 23 Did you see that on TV, did that come to your

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14:24:52 1 attention?

14:24:52 2 **A.** I saw that on -- yes, I saw it when
14:24:55 3 they were showing that on TV. Yes.

14:24:58 4 **Q.** Right. So did you immediately make a
14:24:59 5 call and hey, where's the IAD investigation on
14:25:04 6 this?

14:25:05 7 **A.** From what I'm looking at, I think the
14:25:13 8 case was pending. It's --

14:25:16 9 **Q.** Well, now, wait a second, Mr. Lockwood.
14:25:18 10 It couldn't have been -- you mean the lawsuit was
14:25:20 11 pending or the IAD investigation?

14:25:22 12 **A.** No, I'm not talking about the lawsuit.
14:25:23 13 I'm saying that the IAD case could have been -- I'm
14:25:28 14 thinking that it was -- I think they had it and I
14:25:31 15 think they were -- when they brought it in front of
14:25:34 16 me, that's why I inquired in '20, you know, well,
14:25:38 17 why -- you know, this happened in '17.

14:25:40 18 **Q.** All right. Maybe my questions are
14:25:41 19 confusing you. This document that we've marked as
14:25:44 20 Exhibit 45 clearly shows that Mr. Kistner's case
14:25:49 21 file, 2019-46, was opened on December 19, 2019. It
14:25:54 22 wasn't opened on any earlier date or pending on any
14:25:57 23 earlier day, right?

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14:25:59 1 **A.** No, it was opened on that date. Yes.

14:26:01 2 **Q.** Okay. And would you agree with me that
14:26:03 3 that was after the WIVB investigative journalism
14:26:09 4 report on this incident aired on local TV?

14:26:11 5 **A.** Yes.

14:26:16 6 **Q.** Okay. And that one says case pending,
14:26:21 7 right, as of when we got this disciplinary card
14:26:25 8 May 21, 2020, but in reality it was not sustained
14:26:28 9 by you sometime in August of 2020 when you met with
14:26:34 10 Lieutenant Kelly, right?

14:26:35 11 **A.** Yes.

14:26:36 12 **Q.** Okay. And then we have another
14:26:38 13 incident just this year March 24, 2020. Again,
14:26:41 14 conduct and that one was also pending as of the
14:26:45 15 date this was printed out, right?

14:26:46 16 **A.** Yes.

14:26:47 17 **Q.** So as best I can tell from
14:26:50 18 Officer Schultz's lengthy history of citizen
14:26:53 19 complaints against him since joining the force 12
14:26:56 20 years ago, he's had whatever number that is
14:27:00 21 complaints brought against him and not one of them
14:27:06 22 was sustained by IAD or the police commissioner,
14:27:09 23 whoever it was, am I right?

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14:27:12 1 **MS. HUGGINS:** Form. You can answer.

14:27:14 2 **THE WITNESS:** Yes.

14:27:14 3 **BY MR. RUPP:**

14:27:14 4 **Q.** Well, let me ask it a different way,
5 Mr. Lockwood, because I'd like to get an answer to
6 this one.

14:27:16 7 Is it true that not a single one of the
14:27:19 8 complaints against Officer Schultz in the last
14:27:24 9 12 years since he's been on the force has been
14:27:26 10 sustained by the police commissioner?

14:27:28 11 **A.** Yes.

14:27:30 12 **Q.** Did you review Officer Schultz's
14:27:40 13 disciplinary card when you decided to take his
14:27:43 14 statement that he saw Mr. Kistner throw himself at
14:27:46 15 the SUV at face value?

14:27:49 16 **A.** I saw his disciplinary card, yes. I
14:27:54 17 saw it, yes.

14:27:55 18 **Q.** Okay. Did that have any influence on
14:27:57 19 you whatsoever when you were deciding whether to
14:28:00 20 accept Mr. Schultz's corroborating testimony about
14:28:04 21 what Mr. Kistner was have to alleged have done at
14:28:08 22 the scene?

14:28:08 23 **A.** No.

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14:28:08 1 Q. I mean, would it -- would it have
14:28:10 2 mattered if there were 25 more incidents against
14:28:13 3 Officer Schultz?

14:28:13 4 Was there anything that would have caused
14:28:15 5 you to question his truthfulness, his reliability
14:28:20 6 as an officer, or any of those things?

14:28:22 7 MS. HUGGINS: Form. You can answer.

14:28:25 8 BY MR. RUPP:

14:28:26 9 Q. Let me ask you this. What -- what
14:28:28 10 would it have taken for you to question
14:28:30 11 Mr. Schultz's reliability?

14:28:32 12 A. I look at the -- I look at each and
14:28:36 13 every officer case, case by case. I look at -- I
14:28:41 14 look at this right here of Schultz and it's -- it's
14:28:45 15 nothing pretty.

14:28:48 16 But I'm not going to base on what happened
14:28:51 17 today off of what, you know, happened, you know,
14:28:55 18 six or seven years ago, you know, moving on. I
14:28:59 19 base everything case by case.

14:29:02 20 Q. Okay. But would it cause you to look
14:29:05 21 harder at what Mr. Schultz says is the truth?

14:29:16 22 A. I would -- I mean, yes, I would -- all
14:29:19 23 officers I look at it. I mean, if you don't have

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14:29:21 1 nothing on your record, I'm going to look at it
14:29:23 2 hard to see if you're telling the truth because,
14:29:25 3 you know, I don't know you. I mean, I don't know
14:29:28 4 him personally. Its just -- just know him from the
14:29:31 5 job.

14:29:32 6 **MR. RUPP:** Okay. Let's take a minute break,
14:29:34 7 if we could.

14:29:35 8 **THE VIDEOGRAPHER:** Okay. Going off the
14:29:37 9 record at 1429.

14:29:39 10 (A recess was then taken.)

14:33:01 11 **THE VIDEOGRAPHER:** All right. Going back on
14:33:05 12 the record, time is 1433.

14:33:09 13 **BY MR. RUPP:**

14:33:10 14 **Q.** All right. Mr. Lockwood, I'm going to
14:33:13 15 have marked as our next consecutive -- which will
14:33:20 16 be what, 47?

17 **THE REPORTER:** 6.

18 **MR. RUPP:** 46.

19 **The following was marked for Identification:**

20 **EXH. 46** **IAD investigation summary.**

14:33:42 21 **BY MR. RUPP:**

14:33:43 22 **Q.** Before you look at that, Mr. Lockwood,
14:33:44 23 I'm going to show you what was previously marked

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14:33:47 1 Exhibit 16 very quickly.

2 **THE REPORTER:** Sorry, I just have to write.

3 **MR. RUPP:** Okay. Sure thing.

4 **THE REPORTER:** Thank you. There you go.

5 **BY MR. RUPP:**

14:33:54 6 **Q.** Take a look at that and see that

14:33:56 7 Officer Schultz is indeed officer 230?

14:34:01 8 **A.** Yes.

14:34:02 9 **Q.** Okay. And -- and Kyle Moriarity is

14:34:03 10 listed next to him I believe because Mr. Moriarity

14:34:06 11 was being trained and Schultz was his assigned

14:34:09 12 trainer.

14:34:10 13 Does that make sense to you from what you're

14:34:12 14 seeing on that document?

14:34:13 15 **A.** Yes.

14:34:13 16 **Q.** Okay. If I could have that back,

14:34:14 17 please. Now, I want you to look at what was

14:34:19 18 previously marked as Exhibit 4A.

14:34:26 19 **A.** 4 --

14:34:27 20 **Q.** Yeah, it's the one -- it's the dispatch

14:34:29 21 records we looked at earlier. Well --

14:34:31 22 **MS. HUGGINS:** The CAD.

14:34:38 23 **MR. RUPP:** Okay.

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14:34:45 1 **MS. HUGGINS:** Right under the IAD index is
14:34:49 2 the CAD.

14:34:49 3 **BY MR. RUPP:**

14:34:50 4 **Q.** You see that?

14:34:51 5 **A.** Yeah. Okay.

14:34:52 6 **Q.** So we've now established that 230 is
14:34:54 7 Officer Schultz, right?

14:34:54 8 **A.** Yes.

14:34:54 9 **Q.** C230 representing C district, right?

14:34:58 10 **A.** Yes.

14:34:58 11 **Q.** Okay. I'd like you to take a look at
14:35:02 12 the notation for January 1, 2017, at 11:23:01. Do
14:35:16 13 you see that?

14:35:17 14 **A.** Yes.

14:35:17 15 **Q.** All right. And that's just a few
14:35:20 16 seconds after 230, which is Schultz, 241 -- 241,
14:35:32 17 which is McDermott, and 242, which is Valez, all
14:35:39 18 say that they're going to head to ECMC. Do you see
14:35:42 19 that above?

14:35:42 20 **A.** Mm-hmm. Yes.

14:35:44 21 **Q.** All right.

14:35:44 22 **A.** Yes.

14:35:44 23 **Q.** And do you see that Schultz indicates

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14:35:46 1 that it will be a 941 which is a reference to the
14:35:50 2 New York State Mental Hygiene Law, right?

14:35:53 3 **A.** Yes.

14:35:53 4 **Q.** That that's involuntary psychiatric
14:35:57 5 commit, right?

14:35:57 6 **A.** Yes.

14:35:57 7 **Q.** All right. So --

14:35:57 8 **MS. HUGGINS:** Form.

14:35:58 9 **BY MR. RUPP:**

14:35:59 10 **Q.** -- fair to say from these records, that
14:36:01 11 Mr. Schultz had decided that he was taking
14:36:04 12 Mr. Kistner to the ECMC psych ward for the 941
14:36:09 13 consult, right?

14:36:09 14 **A.** Yes.

14:36:10 15 **Q.** Okay. Now, I'd like you to take a look
14:36:12 16 at Exhibit 46 that I previously handed to you which
14:36:25 17 is the IAD investigation summary of Mr. Schultz's
14:36:30 18 statements given to them about this incident.

14:36:32 19 Do you see that on -- these pages aren't
14:36:34 20 numbered, but if you go four pages in you'll see
14:36:37 21 the summary of what happened in Officer Schultz's
14:36:46 22 interview. Do you see that?

14:36:47 23 **A.** Yes.

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14:36:47 1 Q. Okay. And say call on -- and top line
14:36:49 2 is call on Schmarbeck had nothing to do with 37, do
14:36:53 3 you see that?

14:36:53 4 A. Yes.

14:36:53 5 Q. All right. Now, I'd like you to go
14:36:55 6 four entries from the bottom. And the investigator
14:37:05 7 wrote that Officer Schultz told him that because of
14:37:08 8 his actions at the scene and their observations,
14:37:13 9 nurses suggested that he be taken to CPEP, the
14:37:19 10 CPEP. Do you see that?

14:37:20 11 A. Yes.

14:37:20 12 Q. Now, that is inconsistent with the
14:37:24 13 dispatch records that show that Officer Schultz had
14:37:28 14 already decided that he was going to take
14:37:31 15 Mr. Kistner to the CPEP unit on a 941, isn't that
14:37:35 16 right?

14:37:36 17 A. Yes.

14:37:36 18 Q. Do you have any idea why
14:37:38 19 Officer Schultz would have told the investigating
14:37:42 20 IAD lieutenant something that was not true?

14:37:46 21 A. No.

14:37:53 22 Q. Are you aware that Mr. Kistner's claims
14:37:55 23 in this case that part of the conspiracy to hide

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14:38:01 1 the fact that Ms. McDermott negligently struck him
14:38:05 2 with her SUV, was to have him involuntarily
14:38:08 3 admitted to the psych ward at ECMC?

14:38:11 4 **A.** Repeat that.

14:38:18 5 **Q.** Are you aware that Mr. Kistner contends
14:38:21 6 that the officers at the scene tried to have him
14:38:24 7 involuntarily committed to the psych ward at ECMC
14:38:28 8 to try to provide further cover for
14:38:31 9 Lauren McDermott's negligent driving?

14:38:33 10 **A.** No.

14:38:34 11 **Q.** Are you aware that that is set out in
14:38:37 12 detail in the complaint that my office served on,
14:38:42 13 among others, Karl Schultz in May of 2018?

14:38:46 14 **A.** You said your report?

14:38:54 15 **Q.** My -- the complaint that my office
14:38:57 16 served --

14:38:57 17 **A.** Okay.

14:38:58 18 **Q.** -- on Karl Schultz --

14:39:00 19 **A.** Okay.

14:39:00 20 **Q.** -- informed him that it was
14:39:03 21 Mr. Kistner's allegation that the psych admit at
14:39:07 22 ECMC that he attempted, was to cover up
14:39:09 23 Lauren McDermott's driving negligence.

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14:39:12 1 I'm asking you if you are aware that that
14:39:14 2 was set forth in detail in the complaint?

14:39:16 3 **A.** No.

14:39:17 4 **Q.** Okay. So Mr. Kist -- Mr. Schultz gets
14:39:20 5 the complaint and tells the IAD investigator that
14:39:24 6 the decision to take Mr. Kistner to the CPEP unit
14:39:27 7 was the nurses at the ER at ECMC, not him.

14:39:32 8 **MS. HUGGINS:** Well, form. That miss --

14:39:33 9 **BY MR. RUPP:**

14:39:34 10 **Q.** Well, we've already gone through this
14:39:36 11 Mr. Lockwood.

14:39:38 12 **MS. HUGGINS:** It misstates the --

13 **MR. RUPP:** No, it doesn't.

14 **THE REPORTER:** I need one at a time, please.

15 **BY MR. RUPP:**

16 **Q.** Please don't editorialize.

14:39:41 17 Do you see -- let's go back to Exhibit 4A,
14:39:43 18 Mr. Lockwood. I'm trying to go through this so I
14:39:45 19 can get you out of here for your meeting.

14:39:47 20 But there's no question from these dispatch
14:39:51 21 records, unless they've been falsified, that
14:39:53 22 Officer Schultz from the scene said he was taking
14:39:56 23 Mr. Kistner for a psych consult under 941, right?

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14:40:00 1 **A.** Right.

14:40:00 2 **Q.** So why does he tell the IAD
14:40:03 3 investigator that the decision to take him for a
14:40:05 4 psych consult was the ECMC nurses?

14:40:08 5 **MS. HUGGINS:** Form. You can answer.

14:40:10 6 **BY MR. RUPP:**

14:40:11 7 **Q.** Do you know why he tells him that?

14:40:12 8 **A.** No.

14:40:14 9 **Q.** Is that -- is that a lie?

14:40:17 10 **A.** In -- I'm trying to get this -- okay.

14:40:29 11 In -- in -- the nurse can't tell you to bring
14:40:36 12 someone there for a 941.

14:40:38 13 **Q.** Well, then why would Schultz say that?

14:40:41 14 **A.** I don't know.

14:40:42 15 **Q.** Well, could it be that he was aware
14:40:45 16 that Mr. Kistner had alleged that was part of the
14:40:47 17 cover-up and he wanted to deny that he was part of
14:40:50 18 it?

14:40:50 19 **MS. HUGGINS:** Form.

14:40:51 20 **THE WITNESS:** See, when I'm reading this,
14:40:58 21 I'm reading this -- it says because of his actions
14:41:00 22 at the scene and their observations. That's when I
14:41:04 23 believed he called radio and said we're going to

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14:41:07 1 941 him. That's the way I'm --

14:41:08 2 **BY MR. RUPP:**

14:41:08 3 **Q.** So he's already decided that at the
14:41:12 4 scene, we're taking the guy for a --

5 **A.** Taking --

14:41:13 6 **Q.** -- psych consult, right?

14:41:15 7 **A.** Yes.

14:41:15 8 **Q.** Okay. So why does he tell the IAD
14:41:21 9 investigator that the decision for the psych
14:41:25 10 consult was made by nurses at MC -- ECMC, not him?

14:41:38 11 **MS. HUGGINS:** Form. You can answer.

14:41:40 12 **BY MR. RUPP:**

14:41:40 13 **Q.** Do you know why he tells them that
14:41:42 14 because of his actions in the scene -- at the scene
14:41:44 15 and their observations, nurses suggested that he be
14:41:50 16 taken to CPEP? He had already told dispatch he was
14:41:54 17 taking him to CPEP.

14:41:55 18 **A.** I think he -- I'm looking at it as him
14:41:57 19 and I'm just -- the way I'm looking at this, he
14:42:00 20 called radio and said we're going to ECMC, we're
14:42:04 21 going to 941 him.

14:42:06 22 Because I'm reading right here he's saying
14:42:08 23 because of his actions at the scene and his

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14:42:11 1 observations so we're going to take him to ECMC.

14:42:14 2 Q. No. It says their observations, not
14:42:16 3 his observations, Mr. Lockwood.

14:42:18 4 A. He says because of his action -- I'm
14:42:21 5 sorry, I'm sorry. Because of his action at the
14:42:24 6 scene and their observations so I'm thinking he's
14:42:27 7 saying "their" as officers there.

14:42:29 8 Q. Okay. But the rest of the sentence
14:42:31 9 reads because of his actions at the scene and their
14:42:34 10 observations, nurses suggested that he be taken to
14:42:37 11 CPEP.

14:42:39 12 A. So --

14:42:39 13 Q. Why would the nurses suggest that he be
14:42:42 14 taken to CPEP?

14:42:43 15 A. I'm -- the way I'm looking --

14:42:43 16 MS. HUGGINS: Form.

14:42:44 17 THE WITNESS: The way I would read this is
14:42:46 18 that their observations once they get to ECMC, I'm
14:42:49 19 thinking that he's saying that the nurses suggest
14:42:51 20 when they were there to take him to impact. That's
14:42:54 21 the way I'm looking at that.

14:42:55 22 BY MR. RUPP:

14:42:56 23 Q. He had already decided to take him to

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14:42:59 1 impact through CPEP.

14:42:59 2 A. No, because of -- because of his
14:43:00 3 actions at the scene.

14:43:01 4 Q. Mr. Lockwood, you were -- how many
14:43:03 5 years did you spend as a detective?

14:43:05 6 A. About 17.

14:43:07 7 Q. Did you investigate crime?

14:43:09 8 A. Yes.

14:43:10 9 Q. Did that in -- in part involve you
14:43:14 10 weighing the credibility of different witnesses to
14:43:18 11 events and following leads and things like that?

14:43:21 12 A. Yes.

14:43:22 13 Q. Okay. And you didn't just -- as a
14:43:24 14 detective, if somebody said the sky is green, you
14:43:28 15 didn't just say oh, the sky must be green, he told
14:43:31 16 me it was, right?

14:43:33 17 A. No.

14:43:33 18 Q. Okay. So you actually have training in
14:43:37 19 knowing how to determine whether somebody's telling
14:43:39 20 the truth or not, right?

14:43:40 21 A. In certain incidents, yes.

14:43:44 22 Q. And you actually have training and
14:43:46 23 experience in vetting what somebody has told you

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14:43:50 1 and ascertaining for yourself whether it was true
14:43:53 2 or not, right?

14:43:54 3 **A.** Yes.

14:43:57 4 **Q.** And you employed none of those skills
14:44:00 5 in connection with your review of the IAD file of
14:44:04 6 Mr. Kistner's allegations, not the video, not the
14:44:07 7 truth of what Mr. Schultz claimed he saw, or
14:44:10 8 anything --

14:44:10 9 **MS. HUGGINS:** Form.

14:44:11 10 **BY MR. RUPP:**

14:44:11 11 **Q.** -- is that right?

14:44:11 12 **MS. HUGGINS:** You can answer.

14:44:13 13 **THE WITNESS:** Yes.

14:44:13 14 **BY MR. RUPP:**

14:44:13 15 **Q.** It just got a rubber stamp from you,
14:44:15 16 right?

14:44:16 17 **A.** No. But I'm looking at what your --
14:44:18 18 your complaint is right here about the impact 941,
14:44:22 19 I'm reading what he's saying here and he's saying
14:44:25 20 the -- you know, the action at the scene.

14:44:28 21 **BY MR. RUPP:**

14:44:28 22 **Q.** Mr. Lockwood, where does it say in the
14:44:30 23 summary of Officer Schultz's interview with IAD

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14:44:33 1 that he made the decision to take Mr. Kistner to
14:44:36 2 impact on a 941? Where does it say that there?

14:44:39 3 A. Right in his -- you know, his
14:45:00 4 statement.

14:45:01 5 Q. It doesn't -- it doesn't say that.

6 A. It says --

14:45:02 7 Q. It says the nurses said it.

14:45:04 8 A. No, he said --

14:45:05 9 Q. We know from dispatch he made the call.
14:45:08 10 He's the senior officer on the scene at this point,
14:45:11 11 isn't he? Or he's certainly taking control. He's
14:45:13 12 going to take Mr. Kistner to impact, right?

14:45:15 13 A. Yes.

14:45:15 14 Q. Where does it say that in the interview
14:45:17 15 that Lieutenant Kelly took from him as part of the
14:45:21 16 IAD investigation?

14:45:22 17 A. Where does it say --

14:45:23 18 Q. Where does it say that Schultz made the
14:45:26 19 decision to take Kistner for the 941?

14:45:30 20 A. Because of his actions. That's what
14:45:38 21 I'm going by.

14:45:38 22 Q. No, no. I asked where it says that in
14:45:40 23 the summary.

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14:45:40 1 A. It says --

14:45:41 2 Q. It doesn't say that, does it?

14:45:43 3 A. It says in his -- in this statement and
14:45:45 4 that's the way -- that's the way I'm reading it and
14:45:47 5 that's the way I'm looking at it. That's the way I
14:45:50 6 investigate it. It says because his action and --
14:45:51 7 at the scene and their observations -- their
14:45:55 8 observations.

14:45:55 9 Q. Their observations then it says nurses
14:45:58 10 suggested that he be taken to CPEP. He had already
14:46:02 11 taken him to CPEP, Mr. Lockwood. Unless he lied to
14:46:06 12 the dispatcher, right?

14:46:06 13 A. No. I'm look -- I'm looking at him
14:46:08 14 saying nurses suggest that he be taken to --

14:46:11 15 Q. Okay. Mr. Lockwood --

14:46:11 16 A. -- CPEP once he got there.

14:46:13 17 Q. If he says he's taking him for a 941
14:46:16 18 consult to dispatch --

14:46:16 19 A. He's telling radio that.

14:46:18 20 Q. Yeah. Would you expect that he would
14:46:19 21 take him to ECMC for the 941 or was he lying?

14:46:22 22 A. No, you take him to --

14:46:22 23 MS. HUGGINS: Form.

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14:46:24 1 **BY MR. RUPP:**

2 **Q.** Okay. So why would he have cared what
14:46:25 3 the nurses said if he's already taking him to 9 --
14:46:27 4 on a 941?

14:46:31 5 **A.** I'm assuming -- well, you would get --
14:46:32 6 you would go there and it would be the suggest --
14:46:34 7 the -- you would go there for evaluation. You
14:46:37 8 get --

14:46:37 9 **Q.** I get that, Mr. Lockwood. But he's
14:46:39 10 already said I'm taking him there for the psych
14:46:42 11 evaluation, I want a 941 on this guy.

14:46:45 12 Why doesn't he tell the investigator that,
14:46:47 13 why does he make it look like the nurses made the
14:46:50 14 decision?

14:46:51 15 **MS. HUGGINS:** Well, form. He can't
16 speculate as to why and answer for them.

17 **BY MR. RUPP:**

14:46:53 18 **Q.** Well, you know what, he's an
14:46:54 19 investigator and a detective and I think he can.

14:46:56 20 And it's your job isn't, it Mr. Lockwood?

14:46:58 21 **MS. HUGGINS:** It's his job to speculate?

14:47:00 22 **BY MR. RUPP:**

14:47:01 23 **Q.** It's your job not to take things at

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14:47:03 1 face value just because people say them. It's your
14:47:06 2 job to investigate and vet and determine the truth,
14:47:09 3 isn't it? That's what these hearings are about,
14:47:12 4 right, the truth?

14:47:13 5 A. Yes.

14:47:13 6 Q. You're trying to get at the truth,
14:47:15 7 right?

14:47:15 8 A. Yes.

14:47:15 9 Q. You have clear evidence here that
14:47:19 10 Officer Schultz told dispatch he's taking the guy
14:47:22 11 for the psych consult which could result in an
14:47:25 12 involuntary admission.

14:47:28 13 And when he gets to the IAD investigator, he
14:47:29 14 tells them oh, no, the nurses suggested that he do
14:47:32 15 that.

14:47:33 16 Nowhere in there does he say well, I had
14:47:35 17 already decided I was going to and they
14:47:38 18 corroborated it or we detoured and went to ER.

14:47:41 19 He's making it sound like the nurses made
14:47:42 20 the decision, not him. What do you make of that?

14:47:45 21 A. That's not the way I read it.

14:47:50 22 Q. Okay. You didn't read it that way?

23 All right.

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1 **A.** No, I didn't read it that way.

14:47:55 2 **Q.** And you didn't talk to Officer Schultz?

14:47:57 3 **A.** No.

14:47:57 4 **Q.** Okay. Now, you know and we talked

14:48:00 5 about the fact that a felony criminal mischief

14:48:03 6 results in damage to the SUV over \$250, right?

14:48:06 7 **A.** Yes.

14:48:07 8 **Q.** Are you aware that Officer McDermott

14:48:12 9 said that the mirror on the SUV, the driver's side

14:48:15 10 mirror, was damaged and dangling and the driver's

14:48:19 11 side window would no longer go up and down after

14:48:22 12 Mr. Kistner allegedly threw himself at the SUV?

14:48:25 13 Are you aware of that from your review -- review of

14:48:27 14 the file?

14:48:27 15 **A.** Yes.

14:48:28 16 **Q.** Okay. So you must also be aware that

14:48:30 17 the SUV went in for service two days later at the

14:48:35 18 police garage, right, you know that?

14:48:36 19 **A.** Yeah, we -- yes.

14:48:37 20 **Q.** Okay. I'm going to show you Exhibit 18

14:48:44 21 which is to save time been previously identified as

14:48:47 22 the maintenance work order for Ms. McDermott's SUV.

14:48:51 23 **MS. HUGGINS:** A Fleet Management work order.

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14:48:55 1 **MR. RUPP:** Well, it says maintenance work
14:48:57 2 order right on it.

14:48:57 3 **MS. HUGGINS:** Okay.

14:48:59 4 **BY MR. RUPP:**

14:49:00 5 **Q.** Do you see that?

14:49:00 6 **A.** Yes.

14:49:01 7 **Q.** Okay. Do you see the date?

14:49:02 8 **A.** Yes.

14:49:06 9 **Q.** Four days after the incident involving
14:49:08 10 Mr. Kistner where the mirror is left dangling and
14:49:11 11 the -- the window will not go up and down, there's
14:49:15 12 no reference to any repairs on that vehicle for the
14:49:18 13 mirror or the window, are there?

14:49:20 14 **A.** This would be for maintenance. What
14:49:24 15 you're talking about would be more collision.

14:49:27 16 **Q.** Okay. So we asked your office, the
14:49:29 17 police department, and Ms. Huggins to produce all
14:49:32 18 service records with respect to that SUV that would
14:49:35 19 show any repairs made to it in the aftermath of the
14:49:40 20 incident involving Mr. Kistner and this is what we
14:49:41 21 received.

14:49:42 22 There are no references or records that that
14:49:44 23 vehicle ever had repairs to the mirror or ever had

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14:49:47 1 repairs to the driver's side window being unable to
14:49:51 2 go up and down. Do you know of anything to the
14:49:53 3 contrary?

14:49:53 4 **A.** No.

14:49:55 5 **Q.** Okay. So why would Mr. Kistner be
14:49:57 6 charged with a felony for causing 250 or more
14:50:02 7 dollars of damage to the SUV when there was no
14:50:06 8 charge for repairing anything ever in the history
14:50:08 9 of that vehicle's maintenance records?

14:50:10 10 **MS. HUGGINS:** Form. You can answer.

14:50:11 11 **BY MR. RUPP:**

14:50:12 12 **Q.** Okay. Can you answer that question?
14:50:14 13 Why would there be no records if it caused -- if
14:50:17 14 Mr. Kistner caused \$250 damage to it?

14:50:20 15 **A.** I -- I can't answer that one.

14:50:21 16 **Q.** Okay. Does that in any way in your
14:50:24 17 experience as a detective, Mr. Lockwood, call into
14:50:28 18 question Ms. McDermott's claim that the vehicle
14:50:31 19 sustained any damage at all? Or do we once again
14:50:36 20 just believe Ms. McDermott?

14:50:39 21 **MS. HUGGINS:** Form. You can answer.

14:50:40 22 **BY MR. RUPP:**

14:50:40 23 **Q.** Does it call into question the

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14:50:42 1 credibility of her criminal felony charge against
14:50:46 2 Mr. Kistner that there was no cost or -- incurred
14:50:49 3 by the city to repair the SUV?

14:50:52 4 **A.** Well, there was damage -- damage done
14:50:54 5 to it.

14:50:55 6 **Q.** Really? What was the damage --

14:50:56 7 **A.** The mirror.

14:50:57 8 **Q.** -- Mr. Lockwood? How do you know that?

14:51:02 9 **A.** That's what was in the report.

14:51:05 10 **Q.** From Ms. McDermott, right?

14:51:06 11 **A.** Right.

14:51:06 12 **Q.** And did you know that Ms. McDermott
14:51:07 13 allegedly took a photograph of the damage and then
14:51:10 14 deleted it from her phone?

14:51:11 15 **MS. HUGGINS:** Form.

14:51:12 16 **MR. RUPP:** What's the form objection?

14:51:14 17 **MS. HUGGINS:** I mean --

14:51:15 18 **THE WITNESS:** No, I didn't know that.

14:51:17 19 **MR. RUPP:** She testified to that.

14:51:18 20 **MS. HUGGINS:** She didn't testify she deleted
14:51:20 21 a picture from her phone.

14:51:21 22 **MR. RUPP:** She said she couldn't find the
14:51:24 23 picture.

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14:51:25 1 **MS. HUGGINS:** Okay. That's different
2 than --

3 **MR. RUPP:** Well, I think she said --

4 **THE REPORTER:** Wait --

5 **MR. RUPP:** I think she actually testified
6 that she deleted it.

14:51:26 7 **MS. HUGGINS:** Okay. For the benefit of our
14:51:27 8 reporter and time, it's a form objection.

14:51:29 9 **BY MR. RUPP:**

14:51:29 10 **Q.** Okay.

11 **A.** No, I --

14:51:30 12 **Q.** Officer Lockwood -- or Mr. Lockwood, do
14:51:32 13 you understand that Ms. McDermott claimed that she
14:51:33 14 took a picture of the SUV and could not produce
14:51:36 15 it --

14:51:36 16 **A.** No.

14:51:37 17 **Q.** -- to verify the damage?

14:51:38 18 **A.** No.

14:51:38 19 **Q.** Are you aware that there's no records
14:51:41 20 produced by the City of Buffalo Police Department
14:51:43 21 or the maintenance garage or anyone else showing
14:51:45 22 that that vehicle sustained any damage at all?

14:51:48 23 **A.** No.

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14:51:49 1 Q. Okay. Does it -- in your experience as
14:51:52 2 a detective in all the investigation you did over
14:51:57 3 those 17 years, does it raise any questions in your
14:52:00 4 mind as to why Mr. -- Mr. Kistner was charged with
14:52:03 5 felony mischief, criminal mischief, causing \$250 of
14:52:07 6 damage to a vehicle when there's no indication that
14:52:10 7 any damage was sustained at all?

14:52:12 8 A. No.

14:52:12 9 Q. Okay. Is there anything that would
14:52:13 10 trigger this investigative skill in your mind to
14:52:17 11 question anything that was set forth by the
14:52:19 12 officers in the IAD file that Mr. Kelly brought to
14:52:25 13 you, Lieutenant Kelly brought to you?

14:52:28 14 A. The only thing I can -- what I can say
14:52:40 15 is that when -- I don't know where this vehicle is
14:52:45 16 now or when the IAD got to investigation.

14:52:49 17 The vehicle could have been -- you know,
14:52:50 18 other damage could have been done to the vehicle by
14:52:53 19 that time.

14:52:53 20 Q. Well, Mr. Lockwood, come on. If
14:52:55 21 there's damage to the vehicle and it had to be
14:52:57 22 repaired at city expense, there would be a record
14:52:59 23 of it, wouldn't there?

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14:53:00 1 **A.** I agree, yes.

14:53:02 2 **Q.** Okay. And you haven't seen a record of
14:53:04 3 it, have you?

14:53:04 4 **A.** No.

14:53:05 5 **Q.** Okay. And I haven't seen a record of
14:53:06 6 it and I asked for it. Would you -- would you
14:53:08 7 trust me on that?

14:53:09 8 **A.** Yes.

14:53:09 9 **Q.** Okay. So where's the proof that the
14:53:11 10 vehicle sustained any damage at all much less \$250
14:53:15 11 which was needed to charge Mr. Kistner with a
14:53:17 12 felony for throwing himself at the vehicle?

14:53:20 13 **A.** There's no record.

14:53:24 14 **Q.** Does anything here look at all
14:53:27 15 suspicious to you in your 17-year history as a
14:53:29 16 detective for the Buffalo Police Department?

14:53:31 17 There's no damage, there's no repairs.
14:53:38 18 Anything at all that causes you to question
14:53:39 19 anything that the four officers said was reported
14:53:42 20 to you by IAD?

14:53:43 21 **MS. HUGGINS:** Form. You can answer.

14:53:44 22 **THE WITNESS:** I don't want to just come out
14:54:05 23 and say that it -- you know, there was no damage

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14:54:09 1 done.

14:54:11 2 It could have been -- I mean, there's no
14:54:14 3 records. I agree with you on that. There's no
14:54:16 4 records. It should of -- if there's damage, it
14:54:19 5 should have been taken, there should have been
14:54:21 6 records.

14:54:21 7 **BY MR. RUPP:**

14:54:22 8 **Q.** Especially if somebody's been charged
14:54:23 9 with a felony and the police are going to have the
14:54:25 10 obligation of proving that the damage exceeded
14:54:29 11 \$250, wouldn't you think they'd want to have
14:54:29 12 records of the repairs?

14:54:29 13 **A.** Oh, yes.

14:54:30 14 **Q.** But they don't, do they?

14:54:32 15 **A.** I haven't seen no records.

14:54:33 16 **Q.** So my actual question was does any of
14:54:36 17 this raise any concerns or questions in your mind?

14:54:40 18 **A.** Yes, it would raise concerns. Yes.

14:54:41 19 **Q.** What concerns are those?

14:54:42 20 **A.** Where is the records for the damage of
14:54:45 21 the vehicle.

14:54:46 22 **Q.** Okay. And you don't have an answer for
14:54:48 23 that, do you?

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14:54:49 1 **A.** No, I don't have an answer for it.

14:54:51 2 **Q.** Okay. Did anybody ask Lauren McDermott
14:54:54 3 hey, you charged this guy with a felony for
14:54:57 4 attacking your vehicle, where's the proof that
14:54:59 5 there was any damage to it? Where's the
14:55:02 6 photograph, where's the repair records, where's
14:55:04 7 your work order request to get the SUV fixed?

14:55:07 8 **MS. HUGGINS:** Form. You can answer.

14:55:08 9 **BY MR. RUPP:**

14:55:08 10 **Q.** Did you ask any of those questions?

14:55:10 11 **A.** I didn't ask those questions.

14:55:12 12 **Q.** Okay. So you -- your job as
14:55:13 13 commissioner is not to ask any probing questions at
14:55:16 14 the IAD presentations; is that right?

14:55:20 15 **A.** Yes. Yes, I can -- yeah, my job is to
14:55:23 16 ask those questions.

14:55:23 17 **Q.** But you didn't ask them?

14:55:25 18 **A.** No, I didn't ask those.

14:55:26 19 **Q.** Okay. And so you -- you saw a man who
14:55:28 20 on a video appears to be struck by an SUV and
21 charged with a felony for throwing himself at it
14:55:33 22 and damaging it and you didn't ask any questions?

14:55:35 23 **MS. HUGGINS:** Form.

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14:55:40 1 **BY MR. RUPP:**

14:55:41 2 **Q.** Is that right, Mr. Lockwood, you didn't
14:55:42 3 ask any questions?

14:55:43 4 **A.** As far as the damage to the vehicle,
14:55:47 5 no, I didn't ask.

14:55:49 6 **Q.** Because asking those questions might
14:55:51 7 have called into the credibility of these officers
14:55:53 8 into question, wouldn't it?

14:55:55 9 **MS. HUGGINS:** Form.

14:55:56 10 **BY MR. RUPP:**

14:55:56 11 **Q.** And you didn't want to do that, did
14:55:58 12 you?

14:55:58 13 **MS. HUGGINS:** Form.

14:55:59 14 **THE WITNESS:** It's not my job to question
14:56:02 15 them.

14:56:03 16 **MR. RUPP:** I didn't think it was.

17 **THE WITNESS:** My --

14:56:04 18 **MR. RUPP:** Thank you, Mr. Lockwood. I have
14:56:05 19 nothing further.

14:56:06 20 **MS. HUGGINS:** Did you finish your answer,
14:56:07 21 Commissioner?

14:56:07 22 **THE WITNESS:** No, I didn't finish my answer.

14:56:09 23 **MS. HUGGINS:** Please -- please finish your

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14:56:10 1 answer.

14:56:10 2 **THE WITNESS:** It's not my job to question.

14:56:13 3 It's internal affair's job to question them on

14:56:15 4 those incidents.

14:56:16 5 **BY MR. RUPP:**

14:56:17 6 **Q.** So you're just a rubber stamp?

14:56:19 7 **A.** No, I'm not just a rubber stamp.

8 **Q.** Okay.

14:56:21 9 **A.** I go with the facts.

10 **MR. RUPP:** Nothing further. Thank you.

11 **THE WITNESS:** Thank you.

12 **MR. RUPP:** I got you out of here so you can

14:56:27 13 get to your 3:30. So --

14:56:27 14 **THE VIDEOGRAPHER:** Okay. This concludes

14:56:28 15 today's deposition, the time is 14:46. Thank you

14:56:32 16 very much.

17 (Deposition concluded at 2:56 p.m.)

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1 I hereby CERTIFY that I have read the
2 foregoing 283 pages, and that except as to those
3 changes (if any) as set forth in an attached errata
4 sheet, they are a true and accurate transcript of
5 the testimony given by me in the above entitled
6 action on October 14, 2020.

7

8

9

BYRON LOCKWOOD

10

11 Sworn to before me this

12

13 ----- day of -----, 2020.

14

15

16 -----
NOTARY PUBLIC.

17

18

19

20

21

22

23

1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF CHAUTAUQUA)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

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Andrea J. Hobbs
ANDREA J. HOBBS,
Notary Public.

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DOCUMENT PRODUCTION REQUESTS

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(BY MR. RUPP:)

Q. All right. I'm going to make a request of you on this record that you, following the end of this deposition, go back to your office and arrange for a search to be made for Mr. Kistner's letter and any other documentation that is relevant to Mr. Kistner's claim against the city and would be responsive to our discovery demands.

And I'd ask you to talk with Ms. Huggins about what those demands were, would you do that for me?

A. Yes.

Q. Okay.

MS. HUGGINS: And I understand your -- your request. Off the record we had a discussion regarding what has been marked as Exhibit 41.

I do not believe as I sit here without the complete file in front of me, that I have ever received a copy of this. I do believe that would be responsive to demands that the defendants have made of plaintiff.

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1 So I would ask at this time for any and all
2 correspondence from Mr. Kistner regarding this
3 incident that was directed to the City of Buffalo
4 or at any of the named defendants to be produced
5 likewise.

6 **BY MR. RUPP:**

7 **Q.** And I will make that search and I'll
8 contact Mr. Kistner, but it's my understanding this
9 is the only letter that he ever sent to any of the
10 defendants or the city in any capacity in
11 connection with his complaints about the January 1,
12 2017, incident. So I think you have it, but I will
13 make further inquiry.

14

15 PAGE 142

16 **MS. HUGGINS:** When we were off the record a
17 moment earlier, I made a request for all statements
18 by City of Buffalo employees that were intended to
19 be used in discovery in this process.

20 I was handed a USB that counsel's
21 represented that contain this -- this file, but I
22 would just --

23 **MR. RUPP:** Yeah.

1 **MS. HUGGINS:** -- again, renew that discovery
2 request.
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JACK W. HUNT & ASSOCIATES, INC.

1120 Liberty Building

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EXHIBIT B

Vehicle Information

Service Information

Remarks r/r water pump, serp.belt

Repair Notes

[illegible]

EXHIBIT C

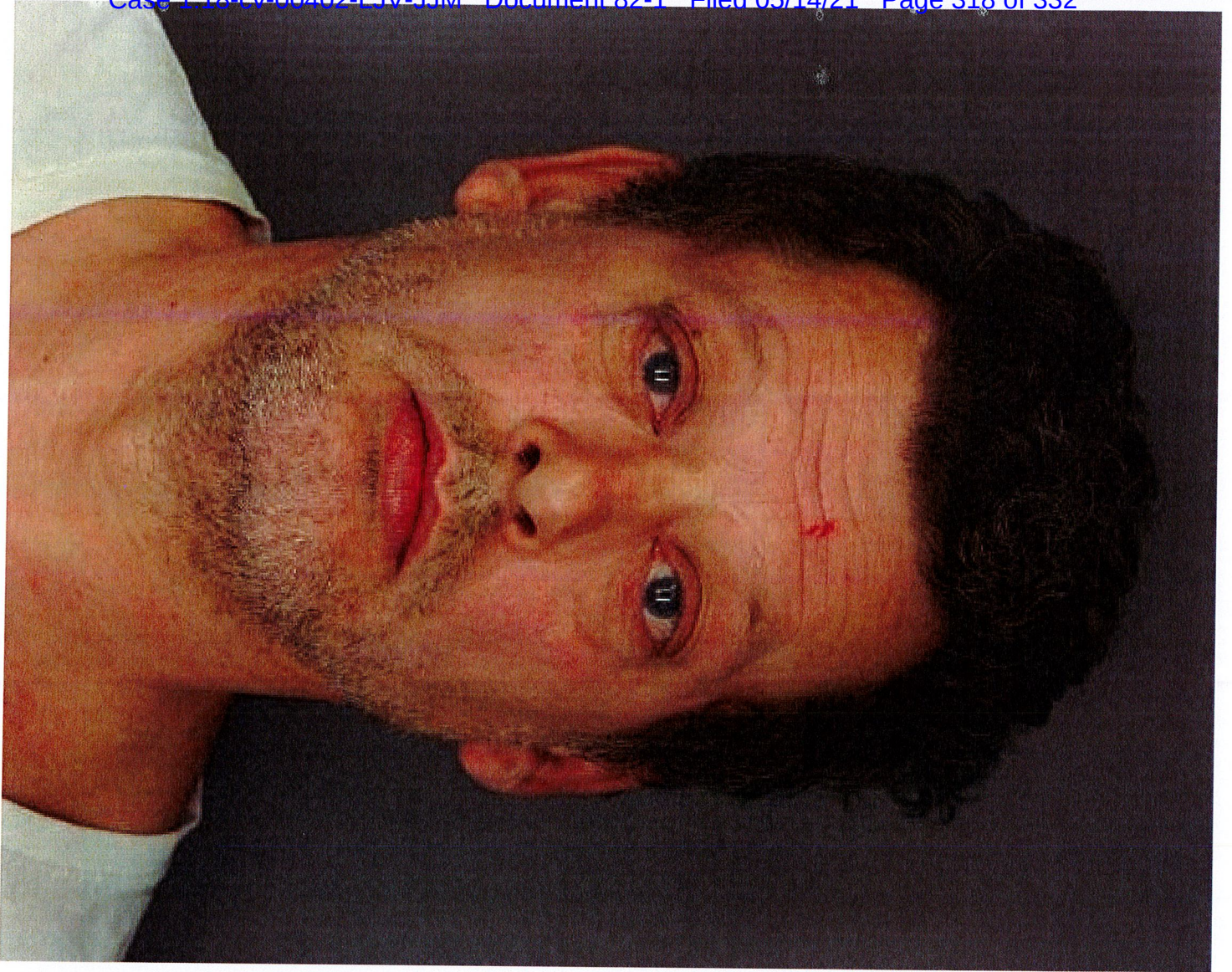


EXHIBIT D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

vs.

Civil No.: 18-CV-00402-LJV-JJM

THE CITY OF BUFFALO, *et al.*,

Defendants.

PLAINTIFF'S RESPONSES TO DEFENDANTS' INTERROGATORIES

Plaintiff James C. Kistner, by his attorneys, Rupp Baase Pfalzgraf
Cunningham LLC, for his responses to defendants' interrogatories, states as follows:

GENERAL OBJECTIONS AND NOTES

A. Plaintiff responds to each of defendants' interrogatories subject to his objections to the instructions and definitions and subject to the general objections set forth here. These objections form a part of the response to each interrogatory. The objections are specified here to avoid duplication by restating them in response to each interrogatory. These general objections may be specifically referred to for the purpose of clarity or emphasis, however, the failure to specifically refer to a general objection is not, and will not be construed as a waiver of any general objection, even if other general objections are specifically stated in response to an interrogatory.

B. Plaintiff objects to each of the interrogatories to the extent that they seek information or documents that are subject to the attorney-client privilege, attorney-work-product doctrine, or any other applicable privilege. Plaintiff will not provide privileged information.

C. If any information is produced inadvertently despite the presence of a privilege, the production does not constitute a waiver of plaintiff's privileges.

D. Plaintiff objects to each of the interrogatories to the extent that they seek information or materials prepared, generated, or received in anticipation of or after the commencement of litigation.

E. Plaintiff objects to the interrogatories to the extent that they are not properly limited in time or scope or to the extent they fail to specify a relevant time period.

F. Plaintiff objects to the interrogatories to the extent that they seek to impose upon him any obligations beyond those imposed by the Federal Rules of Civil Procedure or the Western District of New York Local Rules.

G. Plaintiff objects to the interrogatories as overly broad and unduly burdensome to the extent that they seek information or documents not relevant or related to the claims made in the complaint or defenses raised in the answer.

H. Plaintiff objects to the interrogatories to the extent that they are overbroad, vague, ambiguous, redundant, unduly burdensome, oppressive, or designed to harass or place undue burden and expense upon him.

I. Plaintiff objects to the interrogatories to the extent that they are not reasonably calculated to lead to the discovery of admissible evidence and to the extent that they seek information and documents not material and necessary to the prosecution or defense of this action.

J. Plaintiff objects to the interrogatories to the extent that they request information not within plaintiff's possession or control, information that is equally available to the defendants, or information that is not otherwise available to plaintiff.

K. Plaintiff objects to the interrogatories to the extent the information sought is premature. Discovery is ongoing, and plaintiff and his counsel may learn facts through the course of discovery responsive to the interrogatories. Plaintiff will supplement his responses or otherwise respond in accordance with the Federal Rules of Civil Procedure or the Western District of New York's Local Rules.

L. Plaintiff reserves the right to challenge the competency, relevancy, materiality, and admissibility of any information or documents provided here, and to object on any ground to the use of the information or documents provided here in any proceeding or trial. Plaintiff's responses and any identification of documents does not waive or prejudice any objections plaintiff may later assert, including, but not limited to, objections at trial as to the admissibility of any information or documents provided.

M. Plaintiff objects to the interrogatories to the extent they seek information that could infringe upon his constitutional rights.

N. These responses are based solely upon information presently available to and known by plaintiff; they are given without prejudice to plaintiff's right to produce additional information at a later date should it become located or available as a result of subsequent review of records or additional investigation or discovery by plaintiff. Plaintiff further reserves the right to revise, correct, add to, or clarify the objections or responses set forth here at any time.

O. By producing or failing to produce some or all of the information requested, plaintiff does not concede the relevance or materiality of any request or subject to which it relates.

INTERROGATORIES

1. State each Plaintiff's date of birth, social security number, and residence address presently and at the time of the incident.

RESPONSE: Plaintiff's date of birth is April 3, 1960. Plaintiff's address at the time of the incident was 33 Schmarbeck Avenue, Buffalo, New York. He still resides there. Plaintiff's social security number is 270-70-5112. (Any personal information contained in this interrogatory response should be redacted should the defendants need to file these responses in the future. Defendants should follow appropriate disposal methods to prevent plaintiff's personal information from being inadvertently disclosed outside of this litigation.)

2. State each and every act and omission by Defendants that gives rise to the underlying action.

RESPONSE: Subject to and without waiving his objections, defendants' acts and omissions giving rise to the underlying action were specified in detail in plaintiff's complaint. Plaintiff believes the acts, omissions, and wrongful conducts by the defendants have occurred and are ongoing, as he learned through the defendants' discovery responses that defendants have not been investigated or disciplined as a result of their conduct, acts, omissions, or wrongful conduct on the day of the incidents. The failure to investigate or discipline the defendants is another omission attributable to the defendants.

3. State whether Plaintiff has ever been convicted of a crime. A conviction includes guilty pleas. If so, state what charges Plaintiff has been convicted on and the sentences imposed.

RESPONSE: Plaintiff further objects to this demand to the extent it seeks information with no or questionable probative value, information that is substantially outweighed by its prejudicial effect, or information for which the defendants have not provided plaintiff timely notice of use or an opportunity to contest its use. Subject to and without waiving his objections, plaintiff has not been convicted of any crimes over the past 18 or more years. If the defendants request further disclosure beyond eighteen years, they must first articulate the bases and relevancy of any prior convictions for purposes of defending against this specific lawsuit.

4. State whether Plaintiff is or has ever been a party to a lawsuit not including the underlying action. If so, state the caption information including the court, parties and case number.

RESPONSE: Subject to and without waiving his objections, plaintiff is not and has never been a party to a lawsuit alleging the type of constitutional violations, acts, omissions, or improper conduct by municipal defendants based on the facts asserted in the complaint besides the underlying action. *See also*, the response to interrogatory 3.

5. State each constitutional provision, statute, regulation, ordinance, rule, order, requirement, standard, guideline, policy or procedure that Plaintiff claims was violated by the named Defendants.

RESPONSE: Plaintiff is unable to respond fully at this time, as defendants have failed to provide full and complete discovery responses, including, without limitation, their internal policies, regulations, guidance, and procedures that were duly requested during discovery. Defendants have this information within their sole custody, possession, and control, and plaintiff has no other source for this information. Subject to and without waiving his objections, *see* the response to interrogatory 2 and plaintiff's complaint.

6. State each physical and emotional injury claimed by Plaintiff.

RESPONSE: Subject to and without waiving his objections, *see* plaintiff's detailed complaint. Further, due to defendants' acts, omissions, and improper and wrongful conduct, plaintiff suffered the following injuries: closed-head injury; abrasions to his head; headaches; bilateral wrist, arm, and shoulder pain, including swelling, incisions, abrasions, bruising, numbness, nerve damage, and irritation and injury to the tendons, ligaments, muscles, blood vessels, cartilage, nerves, and soft tissue of these areas; and other injury. Plaintiff's injuries and damages are ongoing. Plaintiff also refers the defendants to the medical records provided in response to their document demand.

7. State the name and address of each healthcare professional that saw or treated Plaintiff for any alleged physical and emotional injuries.

RESPONSE: Plaintiff further objects to this demand to the extent it is duplicative of the information previously provided in his Rule 26 disclosures. Subject to and without waiving his objections, plaintiff refers the defendants to the names and addresses of each healthcare professional contained within his Rule 26 disclosures.

8. State and describe whether Plaintiff had any prior or subsequent physical or emotional injuries or conditions that are the same as or similar to those claimed in the underlying action.

RESPONSE: Subject to and without waiving his objections, plaintiff had not previously, nor has he since suffered the type of physical or emotional injuries that are the same or similar to the severe injuries, embarrassment, humiliation, shock, fright, and loss of freedom caused by the malicious and inappropriate behavior, acts, omissions, and wrongful conduct perpetrated by the defendants as part of their conspiracy. Plaintiff specified his injuries in his complaint and in his response to interrogatory 6. Plaintiff's injuries and damages are ongoing.

9. State any and all property claimed to be damaged or destroyed during the alleged incident and the losses and expenses associated therewith.

RESPONSE: Plaintiff claims compensatory damages and punitive damages resulting from the defendants' acts, omissions, and wrongful conduct that were enumerated in response to interrogatory 2. Upon information and belief, the only property damage claim was made by defendants with respect to a certain police vehicle, which is more specified in plaintiff's complaint and the documents and video recordings attached to the complaint.

10. State whether Plaintiff was employed at the time of the incident and whether he was caused to miss any time from work and if so how much time.

RESPONSE: Subject to and without waiving his objections, plaintiff is self-employed, just as he was on the date of the subject incidents. He lost time from work on the day of the subject incidents and thereafter, including to attend and defend himself against the

criminal charges asserted against him at the defendants' behest. Further, from time to time since the incidents detailed in the complaint and due to the resulting injuries caused by the defendants, plaintiff has been unable to perform maintenance, repair, and similar work at rental properties that he owns, that he ordinarily would have performed, himself, before the incident. Plaintiff is unable to fully quantify the time he has lost from this maintenance, repair, and similar work at this time, but this can be more fully explored at his deposition.

11. State the total monetary amount associated with any claim for lost or diminished past or future earnings related to any missed time from work by Plaintiff.

RESPONSE: *See* the response to interrogatory 10. Further, subject to and without waiving his objections, plaintiff presently and at the time of the subject incidents was and is self-employed, so he is not making a traditional wage-loss claim. But he is seeking reimbursement for amounts that he has been forced to pay for maintenance, repair, and similar work conducted at rental properties that he owns, that he did and normally would have taken care of before the subject incidents. Plaintiff is unable to specify the amounts related to his missed time from this work, other than to confirm at this time that the amount is over \$3,600. Defendants may obtain more information related to this information at plaintiff's deposition.

12. State each item of special damages claimed by Plaintiff (i.e., monetary loss) and total amounts claimed therefor.

RESPONSE: Subject to and without waiving his objections, plaintiff's out-of-pocket losses for medical treatment and legal fees for his criminal defense total over \$8,000. *See also* the response to interrogatories 10 and 11.

13. State each and every item of loss or damages claimed by Plaintiff and the total amounts claimed therefor.

RESPONSE: Subject to and without waiving his objections, plaintiff is claiming compensatory damages and punitive damages resulting from defendants' actions, omissions, and wrongful conduct as enumerated in response to interrogatory 2 and the complaint, in an amount to be determined at trial. *See also* the responses to interrogatories 10, 11, and 12.

14. State the name and amount of every collateral source that has or likely will reimburse Plaintiff for any alleged monetary loss.

RESPONSE: Subject to and without waiving his objections, plaintiff is not aware of any collateral sources that have or likely will reimburse him for his losses.

15. State the premiums paid by Plaintiff for such collateral source benefits for the two year period immediately preceding the date of the incident.

RESPONSE: *See* the response to interrogatory 14.

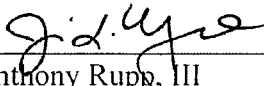
16. State whether Plaintiff is aware of any lien, right of subrogation, or other right of recovery or reimbursement relating to the incident. If so, please identify the person or entity seeking recovery and the amount of reimbursement sought.

RESPONSE: Subject to and without waiving his objections, plaintiff is not aware of any lien, right of subrogation, or other right of recovery or reimbursement relating to the subject incidents.

Dated: March 13, 2019
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC
Attorneys for Plaintiff

By: _____


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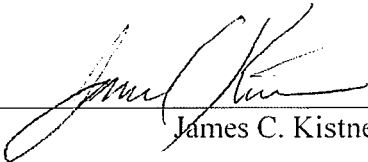
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VERIFICATION

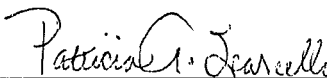
STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

James C. Kistner, being duly sworn, deposes, and says:

I am the plaintiff in the above-entitled matter. I have read the foregoing Responses to Defendant's Interrogatories and I know its contents. The disclosed responses are true based on my own knowledge, except as to those matters stated to be alleged upon information and belief, and as to those matters I believe them to be true.


James C. Kistner

Sworn to before me this
11th day of March, 2019


Notary Public

Patricia A. Scarcello
Notary Public, State of New York
Qualified in Erie Co.
My Commission Expires May 22, 2021

EXHIBIT E

EXHIBIT F